SUPREME COURT OF THE UNITED STATES.

No. 307.

OCTOBER TERM, 1896.

RAFAEL MARIA DEL CASTILLO

versus

W. L. McCONNICO.

AND

WM. H. FITZPATRICK, HORACE C. REESE, J. H. LANG.

IN WARRANTY,

BRIEF IN BEHALF OF DEFENDANT AND APPELLEE.

SYLLABUS.

The writ of error issued herein should be dismissed for want of jurisdiction.

The record should show that the alleged conflict between the Federal Constitution and the State law was specially pleaded in the State court before final judgment. Sayward vs. Denny, 158 U. S. 180; Loeber vs. Schroeder, 149 U. S. 580: Pim vs. City of St. Louis, 17 Supreme Court, 322; Rev. Stat. U. S. 709.

A writ of error to a State Supreme Court can not be sustained when no Federal right was set up or claimed until the filing of a petition for rehearing after final decision by such court. Ib.

The latitude in pleadings allowed by the Louisiana Courts, to plaintiff in a purely petitory action does not apply to cases where particular transfers are declared nullities. In such cases the action is a personal action of nullity, and plaintiff is held to his allegations of record. Michel vs. Stream, 48 La. An. 341; Belaud & Johnson vs. Gebelin & Duggan, 46 An. 327; 47 An. 427; 24 An. 445.

The practice in the State courts can not have the effect of altering the rules and proceedings of the United States Supreme Court, hence any latitude in practice which a State court might permit can not be invoked to excuse the absence from the record of pleas which the Supreme Court of the United States requires to be specially urged, as a condition precedent to its exercising jurisdiction.

The tax deed affords conlusive evidence of compliance, by the assessing and collecting officials, with all matters pertaining to the assessment of and sale of property which are within the original discretion of the Legislature, and as to such matters it can not be contradicted (Act 82 of 1884; Cooley on Taxation, pp. 305, 306; Lake's case, 40 An. 145; *In re* Douglas, 41 An. 769; Henderson vs. Ellerman, 47 An. 306, and authorities there quoted).

In this case the name was correctly given.

The law only recognizes one Christian name, and where several names or prefixes intervene between the first Christian name and the surname they form no part of the name, and their omission does not invalidate the proceeding (17 La. 504; 37 West Va. 665; 50 N. W. Reporter, 701; Black on Judgments, 213).

Plaintiff signed his name R. M. Castillo, omitting the prefix "Del." The assessment, then, to R. Castillo was correct.

An assessment in the name of the owner is a matter within the original discretion of the Legislature. Property may be assessed simply as property without regard to the name of the owner. Acts of La. No. 85 of 1888, Sec. 18; Cooley on Taxation, 399; Thompson et al. vs. Lessee of Carroll et al., 22 Howard, 433; Witherspoon vs. Duncan, 4 Wallace, 217.

The Legislature may validate retrospectively any irregularity in assessments in regard to matters within their original discretion. Cooley on Taxation, 305 and 306; Lake's case, 40 An. 145; *In re* Douglas, 41 An. 769; Henderson vs. Ellerman, 47 An. 306.

An assessment in a given name being a matter within the original description of the law-making power, a variance in the name, the description of the property being correct, comes within the purview of the remedial statute. Act 82 of 1884 is a remedial statute, intended to cure just such defects as is here complained of. Lake's case, 40 An. 145; *In re* Douglas, 41 An. 769; Henderson vs. Ellerman, 47 An. 306; Augusti vs. Lawless, 45 An. 1370.

Act 82 of 1884 has but one object—*i. e.*, to carry into effect the ordinance for the relief of delinquent taxpayers, and it is not unconstitional. Lake's case, 40 An. 145.

The constitutional ordinance was intended to relieve "delinquent taxpayers." A taxpayer is delinquent when the tax is not paid, whether the property has been forfeited to the State or not. The ordinance embraced both classes of property, and the act of 1884 in terms included both.

The advertisement contained the full name of defendant. Notice by publication was sufficient. The addenda "or her estate or heirs" was surplusage, and did not mislead the owner, who knew his name and property.

A final judgment compelling a party to accept and pay for a tax title will act as an equitable estoppel upon the Court, restraining it from setting aside that title in another suit, at the instance of a former owner, who has been delinquent in his obligations to the State for more than a quarter of century.

In construing State constitutions and State laws, the Supreme Court will accept the adjudications of the State Courts as conclusive. Sanford vs. Poe, 17 Supreme Court, 305; Marx vs. Hanthorn, 148 U. S. 172; Burgess vs. Seligman, 107 U. S. 20; Cooley's Constitutional Limitations, 4th Ed., 16; 6 Peters, 291.

The Supreme Court of Louisiana has held Act 82 of 1884 constitutional, and this Court will not disturb its findings.

The Louisiana statute reserves to the tax debtor all his substantial rights, and only makes the tax deed conclusive as to non-essentials, and such a statute is constitutional. Lake's case, 40 An. 145; *In re* Douglas, 41 An. 763; 98 U. S. 517; Cooley on Taxation, 305.

"Due process of law" has not the same significance in tax proceedings that it has in personal actions. In the former, the well recognized and summary proceedings generally employed to enforce collections constitute due process of law. Baker's Annotated Constitution, 216; 115 U. S. 321; 96 U. S. 97; 95 U. S. 37; 18 Howard, 272.

It is not the policy of this Court to interfere with the revenue laws of the States nor with the interpretation given to them by their courts, and a State can provide that an erroneous assessment does not vitiate a sale for taxes.

Witherspoon vs. Duncan, 4 Wall. 217.

Statement of the Case.

While this is a petitory action, it is not an ejectment proceeding, but is a direct personal action to annul a title (see R., p. 2).

Defendant's title, while founded upon a tax sale and involved in the validity of the tax sale, is not, strictly speaking, a tax title, since he bought the property long after the tax sale and paid the full market value of the property at the time, to-wit: the sum of $5800, for same (see his titles, R., pp. 20, 21 and 23).

Defendant did not "set up title in himself by conveyances from one Orloff Lake," but, as his answer shows (R., p. 3), admitted his ownership by virtue of conveyances from Reese and Fitzpatrick, said conveyances having been alleged by plaintiff in error in his original petition (R., p. 1).

Reese and Fitzpatrick, called in warranty, admit their acquisition as detailed in petition of plaintiff in error, and plead, in addition to the title received by them from Lang, a judgment of the Civil District Court for the parish of Orleans, entitled John H. Lang vs. M. Kauffmann and W. H. Fitzpatrick, No. 34,386 of its docket, as *res judicata*, said suit being an action by Lang to compel the acceptance of title to this property by said Kauffmann and Fitzpatrick, same having been objected to by them as being founded upon the very tax sale herein complained of by plaintiff in error (see R., pp. 6 and 8). Warrantor J. H. Lang admits and

avers the sale under the act of 1884, and his compliance with all the requirements imposed by law upon Lake, the tax purchaser, but, aside from that, from the foregoing it will clearly be seen that all averments of title and conveyances, and *especially the tax sale complained of, were made by plaintiff in error.* That defendant merely admitted plaintiff's allegations in this respect, and that nowhere in defendant's pleadings is the tax sale from the State of Louisiana advanced as his muniment of title. *It was not,* therefore, set up by defendant, but was directly attacked by plaintiff in error in his original petition.

The evidence shows:

(*a*) W. L. McConnico acquired an undivided one-half of said property by purchase from H. C. Reese, March 2, 1893, for the sum of $2300 (R., p. 23).

(*b*) That said McConnico acquired the other undivided one-half of said property by purchase from W. H. Fitzpatrick, March 9, 1894, for the sum of $3500 (R., p. 21), (thus becoming sole owner of the property *for a consideration of $5800*).

(*c*) That W. H. Fitzpatrick and H. C. Reese each acquired an undivided one-half of said property by purchase from John H. Lang for a consideration of $2500 (R., p. 25)—Reese being substituted in the sale for one Maurice Kauffmann.

(*d*) That Lang contracted to sell to Fitzpatrick and Kauffmann (R., p. 44). That Fitzpatrick and Kauffmann refused to accept title to said property because Lang's title thereto was based upon a tax sale (R., p. 42). That Lang filed suit against them to compel acceptance of title (R., p. 41). That after trial of the issues raised, which were identical with those involved in this case, the Court rendered judgment (R., p. 47) compelling them to take the property and pay the price thereof, to-wit: $2500.

(*e*) That Long acquired from Lallance (R., p. 36, item six). That Lallance acquired from Lake (R., p. 32. item eight), and that Lake acquired from the State of Louisiana, under Act 82 of 1884 (R., pp. 47, 48, 49 and 50).

(*f*) That the amount paid by Lake to the State was $35 (R., p. 49), and that the amount of taxes due to the State for

the taxes of 1876, 1877 and 1878 was $38.50, exclusive of interest and costs (R., p. 48).

(*g*) That the property was adjudicated to the State for the taxes of 1880, 1881, 1882 and 1883, assessed in the name of R. Castillo (R., pp. 53, 56, 59, 62 and 63).

(*h*) That Lang paid these taxes and redeemed the property (R., pp. 80, 81 and 84).

(*i*) The evidence does not show, but it is admitted that the property was not adjudicated or forfeited to the State for taxes prior to 1880.

(*j*) That the property was acquired by Rafael Maria del Castillo, December 23, 1851 (R., p. 17), and that Castillo *signed his name R. M. Castillo* (R., p. 19) omitting the prefix del.

(*k*) That it was assessed for the years in controversy to-wit: 1876, 1877 and 1878, in the name of R. Castillo (R., pp. 64, 65). The assessment rolls for 1881, 1882 and 1883 are not in evidence. Tax researches issued by the city and State tax collector respectively, for the purpose of showing the amount of unpaid taxes, report taxes paid to the city in the name of R. Costillo from 1870 to 1875 and from 1880 to 1885 and to the State for 1884 and 1885. These certificates, however, are merely tax researches, and are not evidence of assessments (R., pp. 45, 46). There is no evidence whatever in the record of the assessment of those years.

(*l*) That the case was tried in the Court of first instance on its merits. Exceptions of no cause of action, based on the sale under the act of 1884, as alleged by plaintiff being overruled (R., pp, 5–6–9–10 and 40).

(*m*) Evidence tendered by the plaintiff was admitted over objections from defendant (R., pp. 14 and 15). This evidence is found in the record on pp. 64–65.

(*n*) The property was advertised in the name of Rafael Maria Del Castillo, with an addenda, in an abundance of caution, of "or her estate and heirs" (R., p. 40).

(*o*) The Court of first instance decided the case squarely on the evidence (R., p. 3). The constitutionality of the Act of 1884 was not an issue before that court and was not ar-

gued there. The sole question there was whether plaintiff had received notice. The Court held orally that the advertisement was proper, and conveyed full notice; that the assessment was in the name of plaintiff in error, and was a good and proper assessment, and the sale thereunder was a good sale. It may be well to say here that the present counsel for plaintiff in error was not engaged in the case when tried in the court of first instance. The record, pp. 3, 14, 15 and 40, shows that the pleadings were drafted and the case tried for plaintiff by W. S. Parkerson, Esq. So thoroughly satisfied was he of the correctness of the decision of the court that he declined to proceed further in the matter. It was then taken up by the present counsel. It is to be regretted that Judge Théard did not reduce his reasons for judgment, to writing, but since he did not do so, we can only refer the Court to his rulings overruling our exceptions of no cause of action, based on the provisions of the Act of 1884 (R., pp. 5, 6, 9, 10 and 40), and admitting evidence over our objections (pp. 14 and 15), together with his recorded judgment that the "law and the *evidence*" are in favor of defendant, to show that counsel are entirely in error, when they say that "the court of first instance maintained the constitutionality "of said act and ordinance upon all points," and held, etc. Had counsel been engaged in the case at that time, as the writer was, they would not have stated this proposition so broadly and so erroneously.

ARGUMENT.

JURISDICTION.

If the Court Pleases:

This case should be dismissed by the Court for want of jurisdiction, the constitutional question presented in the assignment of errors not having been seasonably raised by plaintiff in error, in the State court.

The record is painfully silent upon the subject of constitutional rights, and is barren of any reference to federal ques-

tions. Nor does the opinion of the Supreme Court of the State furnish the basis for the writ of error sued out herein. There is nothing in that opinion construing any part of the federal Constitution, but its entire context is devoted to the analysis and application of the State Constitution, and legislation enacted to carry its provisions into effect.

In his petition for a rehearing, after judgment had been rendered against him (see Record, pages 86 and 87), plaintiff in error alleges that said act (the Act 82 of 1884) is "violative of the fifth amendment of the Constitution of the United States." This is the first suggestion in the record of any conflict between the national Constitution and the Louisiana statute. The judgment of the Court upon this petition (see p. 88) was simply a refusal to reopen the case, without assigning any reasons for such refusal. It is, therefore, evident that the judgment of the State Supreme Court can not be tortured into deciding a federal question, even had one been raised.

Under the rulings of this Court even so late as the case of Pim vs. City of St. Louis, 17 Sup. Ct. Reporter, Vol. 17, No. 16, p. 322, the right claimed under the federal Constitution must be specially set up in the State Court before judgment, and denied by that Court. That when presented for the first time in a petition for a rehearing it comes too late. "We held at the present term in Chicago & N. W. Ry. Co. vs. City of Chicago, 164 U. S. 454 and 457—17 Sup. Ct. 129, as had frequently before been adjudged, that this Court would not review the final judgment of the highest Court of the State alleged to have denied a right protected by the Constitution of the United States, unless such right was specially set up or claimed in the State Court by the party against whom the judgment was rendered. Rev. St. U. S., 709." * * *

"Upon inspecting the record we find that no federal right was set up or claimed in any form until after the final decision of the case by the Supreme Court of Missouri, and then by a petition for rehearing. That petition was overruled by the Court without any determination of the alleged federal question, indeed without any allusion to it. The claim of a

federal right came too late so far as the revisory power of this Court is concerned" (Pim vs. City of St. Louis, 17 Sup. Ct. 322 and 323, referring to Loeber vs. Schroeder, 149 U. S. 580 and 585; Sayward vs. Denny, 158 U. S. 180 and 183.

Reference to the case of Sayward vs. Denny, 158 U. S. 180 and 183, cited above, shows that this Court fully reviewed the question of the manner in which a federal question must be raised in order that the writ of error may lie to a State Supreme Court. "And," says *Mr. Chief Justice Fuller*, "in that regard certain propositions must be regarded as settled.

"1. That the certificate of the presiding judge of the State Court, as to the existence of grounds upon which our interposition might be successfully invoked, while always regarded with respect, can not confer jurisdiction upon this Court to re-examine the judgment below. *Powell vs. Brunswick County Board of Suprs.*, 150 U. S. 433, 439 and cases cited.

"2. That the title, right, privilege or immunity must be specially set up or claimed at the proper time and in the proper way. *Miller vs. Texas*, 153 U. S. 535; *Morrison vs. Watson*, 154 U. S. 111, 115, and cases cited.

"3. That such claim can not be recognized as properly made when made for the first time in a petition for rehearing after judgment. *Loeber vs. Schroeder*, 149 U. S. 580., 585 and cases cited.

"4. That the petition for the writ of error forms no part of the record upon which action is taken here. *Butler vs. Gage*, 138 U. S. 52, and cases cited.

"5. Nor do the arguments of counsel, though the opinions of the State Courts are now made such by rule. *Gibson vs. Chouteau*, 75 U. S. 8 Wall, 314; *Parmalee vs. Lawrence*, 78 U. S. 11 Wall, 36; *Gross vs. United States Mortg. Co.*, 108 U. S. 477, 484; *United States vs. Taylor*, 147 U. S. 695, 700.

"6. The right on which the party relies must have been called to the attention of the Court, in some proper way, and the decision of the Court must have been against the right claimed. *Hoyt vs. Thompson*, 66 U. S. 1 Black, 518; *Maxwell vs. Newbold*, 59 U. S. 18 How. 515.

" 7. Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved so that the State Court could not have given judgment without deciding it; that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the State Court can be held to have disposed of such Federal question by its decision. *Powell vs. Brunswick County Board of Supvrs.*, 150 U. S. 438, 439.

" Tested by these principles it is quite apparent that this writ of error must be dismissed."

The language of this Court in the cases cited is strikingly applicable to this case. Here we have a case wherein the record is absolutely devoid of any suggestion of conflict between the Constitution of the United States and the State law, and in which the decision of the Court contains not the faintest intimation that any such question had even been dreamed of. When all at once, in the application for a rehearing, counsel advance the claim that the fifth amendment to the United States Constitution has been shattered by this much-abused and frequently-construed tax statute, and that plaintiff in error has been deprived of his property without due process of law; asks the Court to reopen the case, and, upon its refusal to do so, drags us all the way up here to occupy the time of this Court with a matter of which it can take no notice, upon any theory that may be advanced.

The case of Sayward vs. Denny, cited above, distinctly lays down the doctrine that the " petition for the writ of error forms no part of the record upon which action is taken here." This being so there is nowhere an averment of a right denied under the Federal Constitution upon which this Court can act. The record is silent until we come to the petition for a rehearing. That document, under the authorities quoted, if it raises a question at all, does so too late to be considered. But even supposing that it were not too late, does it raise such a question at all? Its averment is " violative of the *fifth* amendment of the Constitution of the United States." No intimation is anywhere given in said petition for a rehearing that any other article or amendment of the Constitution is violated.

It is well recognized and can not now be gainsaid that the prohibitions contained in the fifth amendment are directed against the general government, and not against the States. This doctrine has been recognized and acted upon since the adoption of the Constitution itself. "The fifth amendment must be understood as restraining the power of the general government, not as applicable to the States." "The provision in the fifth amendment * * * is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States" (Baker Annotated Constitution, p. 182, and authorities therein quoted). This view of the application of this amendment has obtained from the earliest days of the Republic, and can not now be seriously questioned, hence we say that a petition for a rehearing which alleges a conflict between a State law and the fifth amendment to the Constitution does not raise a Federal question, and confer jurisdiction upon this Court.

Foreseeing our objection to the raising of a Federal question in the application for a rehearing and in the petition for the writ of error, plaintiff in error seeks to eke out his case by invoking the right recognized in Louisiana, in a class of cases, to which the instant case does not belong, for the plaintiff to urge orally at the trial any defence as to matters not originally pleaded by plaintiff, but propounded in the answer of defendant; the Louisiana system of pleading not admitting of replications, but considering the plaintiff as denying, generally, any new matters set up by defendant. Or in suits for slander of title, the plaintiff being in possession as owner, where the defendant claiming ownership, sets up title in himself, the plaintiff is permitted to attack the title claimed by defendant with every weapon at his command The decisions quoted by plaintiff in error go to this effect, no further. There is not one of them that holds, in a direct action to annul a title of record, the defendant being in possession as owner, and his title, as in this case, *being set out at length* by plaintiff, that plaintiff shall be excused from setting up originally and specifically his every objection to same.

In the majority of the cases cited by plaintiff, possession of the property in dispute was with plaintiff, and in every case the question of title as an issue, was raised by defendant. In this case the sole question is defendant's title, and that issue being raised by plaintiff (see Record, p. 2), the nullity thereof being claimed for reasons stated, *it was his duty to set forth all of his objections to the title he was attacking.* We have not found a single case which holds in a case like this, that he may be excused from so doing or that he may be permitted to orally inject further pleas into the case.

"Plaintiff brings this action to recover a certain lot of ground in the city of New Orleans, which he alleges defendant has illegally taken possession of. * * *

"The plaintiff is really seeking to attack a judgment and a sale under it without having alleged in his pleadings any irregularity or illegality before or after the judgment. This can not be done. The defendant's title will be upheld until its defects (if any there be) be specially stated and proved."

F. Lacroix & Cordeviolle vs. Edward D. White, 24 An. 445.

"Plaintiff in bringing a petitory action is not necessarily forced to cumulate therewith an action of nullity to set aside judicial proceedings in which apparently his title to the property has been divested. He has, *at his risk*, the right to allege such procedings to be absolute nullities, and to go to trial on that issue." Beland & Johnson vs. Gebelin & Duggan, 46 La. An. 327. Affirmed in Callahan vs. Fluker, 47 La. An. 427.

Callahan vs. Fluker, 47 An. 427.

But, even if we are wrong in our view of the want of right in plaintiff in error to urge unpleaded objections in the State Court, we think that the practice there can not affect the well settled rulings of this Court, backed by Rev. St. U. S. 709, that such right must be specially set up or claimed in the State Court, and that the record must contain within itself, evidence that such question was raised and decided adversely to the right claimed. The decisions of this Court, hereinbefore quoted, are, it seems to us, conclusive that where the record, or the decision of the State Court, does not show the question

to have been raised and decided adversely to the claim, the jurisdiction of this Court can not attach. If, as is affirmed in Sayward vs. Denny, quoted above, "the certificate of the presiding judge of the State Court as to the existence of grounds upon which our jurisdiction might be successfully invoked * * * can not confer jurisdiction upon this Court to re-examine the judgment below," the argument of counsel, based upon authorities totally inapplicable to the case, certainly can not vest that jurisdiction.

We respectfully submit, therefore, that the writ of error issued herein should be dismissed for want of jurisdiction.

MERITS.

The theory upon which this suit was brought is entirely at variance with the line of argument now adopted by plaintiff in error. The plaintiff originally rested his case upon his claim that the assessment of the property was erroneous, and therefore null, and that the advertisement under which the sale took place was defective. These were the sole issues tendered and tried in the court of first instance and were the only points decided by that court, and so well satisfied with the correctness of the decision was the attorney who tried the case for plaintiff, that he declined to prosecute it any further. It was then that present counsel took charge of the case, and after an adverse decision by the State Supreme Court, have sued out the writ of error to this Court.

We have already stated our objections to the jurisdiction of the Court, but desire to say here that plaintiff in error being a foreigner and having the choice of tribunals, selected the one he deemed the most favorable to his cause, and having had his day in that forum, should abide the result. It is a matter of local history in New Orleans, that the United States courts there are much more strongly inclined to favor the validity of tax titles, and particularly those based upon the act of 1884, than are the State courts. It so happened that both of the Federal judges were members of the constitutional convention which adopted the ordinance under which

the law in question was passed; that they assisted in framing said ordinance and voted in the convention in favor of its passage, and now on the bench assist by their judgments to carry it into effect. The general knowledge of this tendency upon their part has, notoriously, induced the formation of corporations under the laws of other States, which, dealing in tax sale properties in Louisiana, claim the protecting jurisdiction of the Federal courts to enforce the sales. It was, unquestionably, this knowledge that induced plaintiff in error to select the State court, it being more favorably disposed to his side of the case, as the Court before which he would plead his cause. His petition, therefore, was carefully drawn, so as to avoid any question of the conflict between the tax statute and the United States Constitution, and to present solely the question of the sufficiency of the assessment and notice by publication.

The Court of first instance decided that the assessment was good, and that notice by publication had been given to plaintiff. As we have shown in our statement of facts, by reference to the record, this decision was reached by the Court after a full hearing and upon evidence admitted over our objections. Plaintiff in error has not, therefore, been deprived of his property without due process of law, as he has as a matter of fact submitted his cause to a tribunal of his own choice and had judgment thereon.

At the outset of this discussion we desire to disabuse the mind of the Court of the idea that we are merely defending a tax title in the ordinary acceptation of that term. While it is true that in order to vindicate our ownership of the property we are of necessity bound to maintain the validity of the tax sale, and the competency of the legislation under which it was made, we are still before the Court as a purchaser in good faith for full value (nearly $6000) of property, the title to which had by a court of competent jurisdiction been declared to be without a flaw, with regard to the identical tax proceeding herein sought to be avoided.

The situation of the warrantors, Fitzpatrick and Reese, in this attack upon the tax title, is one which peculiarly invites

in their favor every equitable consideration. Knowing the uncertainty with which it was the vogue to clothe such titles made by the State—though by reason of their authorship they should ever be the stanchest and most reliable of titles—these intending purchasers declined to perfect their contract of purchase. The power of the judicial arm of the government was invoked to compel them. A suit was regularly instituted before a perfectly competent Court, issues joined, and the very causes of possible invalidity of the title which are now urged against it were submitted to the Court for adjudication. The Court solemnly decreed the title to be good, unimpaired by the causes propounded against it, and commanded these warrantors to take it in fulfilment of their contract. Under such judicial compulsion they complied, and parted with their money.

It is not pretended that, as against the present plaintiff, that decree constitutes *res judicata*, because he was not a party to it. Yet that decree has surely some quieting and protecting force and virtue, and is entitled to be respected. It was final, and is and was as effective as any decree of the Supreme Court. It decided the title to be a lawful and legal one, and that decision is as unimpeachable and conclusive of that question as any this Court can pronounce, and, being final, is of equal dignity. In obedience to it, and upon faith in it, the warrantors acted. It would be strange, anomalous and unseemly that this Court should, to the prejudice of the warrantors, pronounce their title invalid; that one final decree of a competent Court should compel them to buy the title as a lawfully sound title, and that another final decree of a competent Court should strip them of it as unlawful and radically null, the charges of nullity being identical in the two instances. Such an outcome of a *bona fide* submission of a serious question to the judiciary would not be creditable to the administration of law and justice. It would give at least apparent foundation for the fear already entertained by many citizens, that in the courts of justice are numerous springs and man-traps, set for the destruction of the suitor.

Therefore, while, as we have said, the judgment of the Civil

District Court, Division "A," does not constitute *res judicata* as to this plaintiff, according to the Civil Code definition of "the thing adjudged," yet we say it operates a strong estoppel upon the courts from disturbing its effect. To grant the prayer of the plaintiff's petition, will be in effect to reverse, annul and avoid, as erroneous, that judgment, though it is, by the very terms of the law, as final and irrevocable as if it had been affirmed on appeal to this Court, and would be utterly to destroy that judgment, though it can now never be appealed from. For the sake of certainty and stability, which constitute the most precious qualities of judicial operations; for the sake of confirming the confidence of citizens in the consistency of the administration of justice by the courts, without which confidence courts everywhere lose their usefulness, your Honors will hesitate long before introducing such an incongruity into judicial proceedings as the annihilation of rights sanctified by a judgment of equal finality and dignity as that by which they are destroyed.

It is true that the Supreme Court of the State viewed the case "as one where the property of a citizen, to which the State had no shadow of title," had been sold for taxes under the Act No. 82 of the session of 1884. Defendant does not claim otherwise. But it is not true that the "alleged adjudications to the State of Louisiana were not considered material, because they had been wiped out by a redemption to the name in which they were made, and the assessments on which they were based being radical nullities, owing to misdescription of the owners." (See Plaintiff's Brief, p. 7.)

This statement is erroneous and misleading.

The sale to Lake was for the taxes of 1876, 1877 and 1878. The adjudication to the State was for taxes of 1881, 1882, 1883. The Court in its opinion (p. 84) says: "The adjudication to Lake in 1885 under the act of 1884 was followed by the deed authorized by that act, and it further appears *that one of Lake's vendees has paid all the taxes accrued since 1879*, MANIFESTLY INTENDED TO COMPLETE THE TAX TITLE." (The italics and capitals are ours.) We make this reference to show that the Supreme Court not only did not, as counsel states, consider

these adjudications immaterial, as being erroneous, but that it, as a matter of fact, considered the redemptions from said adjudications to the State, same being made by "one of Lake's vendees," as payments "manifestly intended to complete the tax title." And this was just what they were.

We will discuss first the facts of the case and then take up the question of the authority of the Legislature to adopt legislation of the character which plaintiff in error complains of.

An examination of plaintiff's petition shows that his sole grounds of complaint are that the assessment, advertisement and sale for the years 1876, 1877 and 1878 were "null and void, and of no effect." Why? Because for those years, the ones for which the sale was made, the assessment rolls, admitted over our objection, show that the property was assessed to R. Castillo, and that in the advertisement through an abundance of caution the tax collector had added, after the name, which, by the way, was the full name of plaintiff in error, the words "or her estate and heirs."

The principal question is as to whether or not the assessment to R. Castillo was an assessment in the name of the owner, and, if not, whether the variance is cured by the remedial statute, and in this connection it must be determined whether all the names and prefixes of an individual must be given on the rolls, or if one is sufficient. In judicial proceedings only one name is required to be given. The Code of Practice, Art. 179, says that the citation shall contain "the name of the defendant." Art. 172 says that the petition must contain the "name and surname" of plaintiff. Neither article says that the *names* of parties must be given. Where the law calls for the name of a person, the first name or initial is sufficient. In Shipman & Ayres vs. Haynes, 17 La. 504, the Court said: "The Code of Practice, Art. 172, requires a name and surname, not the *names* and surname." This is the view taken by the common law. We find in the American Digest for 1893, p. 3548, quoting 37 West Va. 665: "A middle name or its initial is no part of the name of a person," and in the same Digest for 1892, at p. 3729, quoting 50 N. W. 701 (a

North Dakota case): "In foreclosure proceedings under a power of sale in a mortgage, a mistake in the middle initial in the mortgagor's name will not invalidate the sale, since the law recognizes but one Christian name."

In Black on Judgments, at p. 213, we find the following: "It was enough that one Christian name was properly added to the surname of the defendant, for in legal proceedings the law recognizes but one Christian name, and where a party is sued by that alone the proceedings taken may regularly be continued to judgment in that name, and the fact that he may have one or more other names between his first Christian name and his surname will in no way affect their validity. This is an old and well-established rule of the common law, and has in no manner been changed, either by legislation or the rulings of the Court in this State. So there is no material variance where a judgment is entered in favor of Laura Wilcox, guardian of W. L. Wilcox, when thecorrect name of the infant is W. B. Wilcox."

It is quite clear from the foregoing that in this case the assessment is a good one, and this is more apparent when, as shown by appellant's own signature to the title under which he claims, the prefix "Del" is omitted, as not forming any part of his name. It will be observed that his name is signed to said act as R. M. Castillo. He has himself placed in the record the best possible evidence that this prefix forms no part of his name. The name as signed by plaintiff himself is R. M. Castillo, and as under the above quoted authorities the middle initial is unimportant, forming indeed no part of the name, and the prefix Del being immaterial, it follows that the assessment to R. Castillo is a good assessment, and a sale made thereunder is valid.

We think that we have demonstrated the assessment to have been good and the sale thereunder binding, but let us go a step further. This sale was made under the provisions of Act 82 of 1884, and we think it all the stronger for that.. We take the position that under that act plaintiff is precluded from questioning our title in the manner attempted. There is no allegation in the petition to warrant it. It is not alleged

that the property was not assessed; on the contrary, there is a distinct statement that there was an assessment. The taxes were not paid. The property was not exempt. It was correctly described. All the indispensable jurisdictional prerequisites were complied with. There was some question in argument, as to notice, which will be touched on later. The whole burden of the complaint of plaintiff in error is that the assessor described him as R. Castillo instead of by *all* his names. We contend that the officer has done his full duty, but even if he had not, the healing effect of the statute would apply and the sale would still be good.

Where a sale is made under the revenue laws for current taxes it may be readily conceded that the most rigid compliance with all the forms is imperatively demanded. But where the sale is made under a remedial statute, as the act of 1884, the entire reason and purpose of the law would be defeated if the same unbending adherence to form were demanded. The constitutional mandate was that the mass of delinquent taxes then owing to the State should be collected, and to that end, after the period of grace extended by the ordinance had expired, the Legislature was commanded to enact such laws as would accomplish that object, by selling the property subject to the tax, and vesting the purchaser with a *complete* and irredeemable title.

The definition of "complete," as given by Mr. Worcester, is: "Having no deficiency, perfect, consummate, entire, finished, ended, concluded." If then the ordinance for the relief of delinquent taxpayars is to be given effect, the act providing for the sale of property for the taxes covered by the terms of the ordinance should receive such a construction as will compass that end. This was the view taken by the Supreme Court of Louisiana, it seems to us, in the decision of the Lake and Douglas cases, affirmed so positively in the case of Henderson vs. Ellerman, 47 An. 306.

In re Orloff Lake the Court said: "Reference to the paragraph we have quoted from the petition of opponent will disclose that he does not allege that *no assessment* was made at all, but that he does allege that the property was not assessed

in the name of Mrs. H. P. Harrison, etc.; that the same was *illegally assessed in the name of* John Boylan," etc.

"What is meant by the phrases that the property was *assessed according to law.* * * * That the property was *advertised according to law.*

"Do they not necessarily imply that all these essentials had been fulfilled, and that the tax title is only made *conclusive evidence* that if performed they have been performed according to law? Does it not follow as a legal sequence that as opponent's complaint is that his property was not assessed *in the name* of the true owner, and was illegally assessed *in the name* of John Boylan, it is excluded by the deed, because *it* furnishes conclusive evidence of the correctness of the assessment, if made at all? It would seem so."

In the Douglas case, 41 An. 769, the Court used the following language: "The only complaint is of certain irregularities in the assessment in non-compliance with the special requirements with the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential." Cooley on Taxation, p. 282: "If the proceeding had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute intended, and was competent to heal."

It is not alleged herein that there was no assessment at all, but, as in the Lake case, that the property *was* assessed but assessed in the wrong name. We think we have shown the assessment to have been correct, but even if the name was wrong, which we do not for a moment admit, we hold that such defect was healed by the curative statute; as was decided in Lake's case.

Here was an assessment in the name of the owner. The property was accurately described. The taxes for which the property was sold were due. The advertisement contained the full and correct name of the owner, as declared by himself in this suit. The adjudicatee has paid the subsequent

taxes and costs as required by the law and his bid. He went into possession of the property, and himself and his vendees have held open and notorious possession as owners for nearly ten years.

What more is needed to make a tax title complete?

Plaintiff in error claimed that because the collector, through an abundance of caution, inserted in the advertisement, after the name "Rafael Maria Del Castillo," the words "or her estate and heirs," he received no notice of the sale; that the advertisement was misleading and was not such as to put him on his guard. Little or no argument is necessary on this point. The full name of the owner was published in the advertisement. He is presumed to know his property and to know whether he has paid his taxes or not. He knows that taxes are due each year; that if they are not paid that property is sold to enforce payment, and when he sees his property advertised for sale by a correct description and under his name, for taxes which he knows he has not paid, it is idle for him to say that he has not been notified, or that the mere addition of the words "or her estate or heirs," after the name, was misleading to him.

The name "Rafael Maria" was misleading to the collector, but the addenda could not possibly have misled Castillo, who was thoroughly familiar with both his own name and property, and especially could he not be misled when they were published in connection the one with the other.

In its opinion in this case (see Record, p. 85) the Supreme Court said: "Sales of property for taxes prior to 1879 are governed by the ordinance for the relief of delinquent taxpayers and by the act of 1884 prescribing newspaper notice. *In this case the advertisement gave the full name of plaintiff*, adding her estate or heirs, *and in our view the advertisement conforms to the requirement of the act.*" (Italics ours.)

We have gone thus fully into the facts of the case, and the law applicable to those facts, in order to show to the Court, from the Record itself, that plaintiff in error was deprived of no right guaranteed him under the Constitution of the United States, but that he invoked and had accorded him "process of

law" to test the correctness of the tax proceedings, and that after a full hearing the case was decided against him.

ACT 82, SESSION OF 1884, CONSTITUTIONAL.

The Supreme Court of Louisiana has decided that the act of 1884, No. 82, was intended solely to carry into effect the constitutional ordinance for the relief of delinquent taxpayers. Lake's case, 40 La. An. 147.

In order to correctly construe this constitutional ordinance, and the legislation adopted to carry it into effect, it is necessary for the Court to understand something of the conditions which prevailed in Louisiana at the time her present Constitution was adopted. The State had, from the close of the war up to that time, 1879, been under the control of carpetbag and alien officials, whose chief aim was the enrichment of themselves and their favorites at the public expense. The recklessness and cupidity of these officers plunged the State enormously in debt, and their carelessness threw her accounts into hopeless confusion. This was the state of affairs prevailing when the people of the State recovered control of her destinies. And when, in 1879, a Constitutional Convention was held, and that body addressed itself to the cleansing of the "Augean stable," it was discovered that the books of the Auditor of the State and of the various tax collectors teemed with delinquent taxes, some of which rested upon property that had not for years contributed anything to the public treasury. In order to induce the payment of these taxes and to enforce payment in case the owners neglected or still refused to pay same, the convention adopted what is termed the "Ordinance for the Relief of Delinquent Taxpayers." This ordinance, which which was submitted with the balance of the Constitution to the people of the State for ratification, was voted upon and adopted by the people as a part of their organic law, and has the same force and binding effect as all other parts of that instrument.

So much of the ordinance as affects the case reads as follows:

RELIEF OF DELINQUENT TAXPAYERS.

" Art. 1. Be it ordained by the people of the State of Louis-
" iana, in convention assembled: All interests, penalties, costs,
" fees and charges whatever, on taxes and licenses due the
" State, or any political corporation therein, prior to the first
" day of January, 1879, and yet unpaid are remitted; and all
" property forfeited to the State or any political corporation
" on account of non-payment of taxes and licenses, or to which
" the State or any political corporation now has a title, shall
" be redeemable, and the title to the State or any political
" corporation thereto annulled, upon the payment by the
" debtor, or any interested party, of the principal of all taxes
" and licenses that may be due thereon at the date of redemp-
" tion, and this right of redemption shall continue until the
" first day of January, 1881. In the event the principal of
" said taxes and licenses is not paid by said time, the inter-
" ests, penalties, costs, fees and charges hereinbefore remitted
" shall revive and *attach to the property upon which the taxes*
" and licenses are due, *and such property shall be then sold in*
" *the manner to be provided by law, and the title to the purchaser*
" *shall be full and complete* * * * and provided fur-
" ther, that nothing in this ordinance shall be taken as
" granting any time for the payment of the principal of said
" taxes and licenses; and provided further, that interest
" shall accrue and be collected on the principal of said delin-
" quent taxes and licenses," etc. (Italics ours.)

The purpose of the ordinance was to induce persons who were delinquent in the payment of their taxes, of which there were a great many, to settle their indebtedness to the State, and to accomplish this, they were offered the privilege of paying, if simply delinquent, without interest or other penalties, or if the property had passed to the State or political corporation, of redeeming same upon payment of the amount of the tax without interest or costs, provided said payment was made by January 1, 1881. If not, the property, whether delinquent or forfeited to the State, was to be sold *in the manner to be provided by law*, and the *title of the purchaser was to be full and complete.*

The Court will observe that this is a provision of the organic law, which had been submitted to a vote and was adopted by the people. It directs the passage of laws to carry it into effect and commands the law-making power to enact a law which will give to the tax buyer, a "full and complete" title to the property which he buys.

In response to this mandate, Act 107 of 1880 and Act 98 of 1882 were passed. Act 107 of 1880 did not accomplish the purpose, because by its terms it was limited in its application to "the sale of all property forfeited or sold to the State for delinquent taxes or licenses." Where it was established that the property had been "sold or forfeited to the State," the act applied, and a valid sale could be made. But right there was the trouble. The Legislature had failed to provide for the sale of property *which had not* been forfeited or sold to the State. To cure this, Act 98 of 1882 was passed, but it also failed of its purpose because of its specific directions, and the limitation of the price at which the collector could sell. Act 82 of 1884 then became necessary, with its remedial and healing effect, and unlimited price. Like Act 98 of 1882, it embraced all classes of delinquent property, whether forfeited or sold to the State or not; and under it, for the first time, the State was enabled to effectually carry out the constitutional ordinance.

That portion of Act 82 of 1884, bearing upon the issues herein raised, reads as follows:

"SECTION 1. Therefore, be it enacted by the General "Assembly of the State of Louisiana. That it shall be the "duty of each tax collector, and *ex-officio* tax collector, to "immediately advertise for sale at public action, all prop-"erty which has heretofore been, or which may hereafter be "bid in for the State, under the provisions of existing laws, "*and all property on which there remain unpaid taxes due the* "*State prior to December 31, 1879.* That all such property "shall be advertised three times in thirty days, and in Eng-"lish only, the last advertisement to occur on the day on "which said property is advertised to be sold. *Such adver-*"*tisement shall be full and sufficient notice to all persons inter-*

" *ested, and no other notice shall be required.* The property " shall be advertised by a description only sufficient to " identify, describe or deliver the property. Such adver- " tisement shall *contain* the name of the party in whose name " the property was assessed, *or the name of the present owner* " *of the same*, and said advertisement must designate the time " and place of offering. If the sales advertised to take place on " a specified day are not completed on said day, the same shall " be continued over from day to day until the same are com- " pleted. In advertising said property for sale, the tax col- " lector may include between one general heading and one " general conclusion several pieces of property.

" SEC. 2. Be it further enacted, etc., That said property " shall be adjudicated and sold to the last and highest bid- " der for cash. * * *

" SEC. 3. Be it further enacted, etc., That each tax collect- " or and *ex-officio* tax collector shall, as soon as said adjudi- " cations to bidders are made and complied with, execute to " each purchaser a deed of sale in the name of the State, of " each specific piece of property, before a duly qualified " notary public by authentic act, to be by him selected, a " duly certified copy of which deed shall be *prima facie* evi- " dence of the following facts: 1st. That the property con- " veyed was subject to taxation; 2d. That none of the taxes " for which said property was offered were paid, and said " deed shall be conclusive evidence of the following facts: " 1st. That the property was assessed according to law; " 2d. That the taxes were levied according to law; 3d. That " the property was advertised according to law; 4th. That " the property was adjudicated and sold as stated in said " deed; and, 5th, That all the prerequisites of the law were " complied with by all the officers, from the assessment up to " and including the execution and registry of the deed to " said purchaser; and duly certified copies of said deeds " shall be full proof without further evidence of all con- " tained therein. If only a portion of the taxes for which " the property is sold are proved to have been paid, the sale " and the title to the purchaser shall nevertheless be good

" and valid, the same as if all the taxes for which it is sold " had not been paid."

Plaintiff in error contends in his application for a rehearing and in his assignment of errors that a sale made under this statute deprives him of his property without due process of law, and that it is beyond the power of the Legislature to enact such a law. We respectfully submit that this is no longer an open question. There have been too many decisions of the Courts, both State and Federal, sustaining such laws, to admit of a doubt upon this point. This very statute has been several times before the Louisiana Supreme Court upon this question, and each time the Court has upheld the authority of the Legislature in the premises. Lake's case, 40 An. 142; Douglas' case, 41 An. 765; Breaux vs. Negrotto, 43 An. 430; Henderson vs. Ellerman, 47 An. 306.

In this connection we beg to call the attention of the Court to the carefully considered and comprehensive opinion of Mr. Justice Fenner, of the Louisiana Supreme Court, in the Douglas case, wherein this very point was involved.

"The answer of the mortgagees sets out various defences entirely similar in character to those which were made, and overruled, by us in a recent case, In the matter of Orloff Lake, 40 An. 142.

"The Act 82 of 1884 is a remedial and healing statute, similar to others which have been passed in many States of the Union, the effect of which is to cure defects in prior tax proceedings by making the tax deeds conclusive evidence that the requirements of the law in certain matters had been complied with.

"Such statutes have been frequently subjected to judicial consideration and review.

"The principle is universally acknowledged, that where the property is taken in the valid exercise of the taxing power, the owner is not deprived of it 'without due process of law,' within the meaning of the prohibitions on that subject contained in the State and Federal Constitutions. McMillen vs. Anderson, 95 U. S. 40; Davidson vs. New Orleans, 96 U. S. 97.

" There are, however, certain requirements absolutely es-

sential to constitute a valid exercise of the taxing powers, without which no tax sale could be validly made. The chief of these indispensable prerequisites are—

"1. That a tax has been levied.

"2. That the property sold is subject to taxation.

"3. That the property has been assessed.

"4. That the taxes had not been paid.

"5. A statutory warrant for the sale.

"6. A sale made under such warrant.

"Any statute authorizing the sale of a man's property for taxes which had not been levied, or where the property was exempt from taxation, or where the property had not been assessed, or where the taxes had been duly paid, would unquestionably be a taking in excess and outside of the taxing power, and such taking would not be with 'due process of law.'

"So any statute which should attempt to cure such substantial defects, or should attempt to debar the owner from proving, in defence or assertion of his rights, that a pretended tax sale was wanting in any of these essential prerequisites, would violate the constitutional prohibition and could not be enforced.

"But outside of these fundamental and *quasi*-jurisdictional requirements, and with reference to the time and manner in which the tax proceedings shall be conducted, the legislative discretion is supreme and can not be judicially controlled.

"As the Legislature may, in advance, prescribe and direct the time and manner in which these shall be done, it may likewise provide that failure to comply with such directions shall not defeat the sale, and may constitutionally provide that the tax deed shall be conclusive evidence that such directions were complied with, as to time, manner and every other matter originally within the legislative discretion.

"Broadly stated, the doctrine is that the Legislature may make the tax deed conclusive evidence of compliance with every requirement which the Legislature might, originally, in the exercise of its discretion, have dispensed with.

"As stated by Judge Cooley:

"'The general rule has often been declared that the Legis lature may validate, retrospectively, the proceedings which they might have authorized in advance.' Cooley on Taxation, p. 229.

"He states certain exceptions, however, to the general rule, which have no application in the instant case.

"This doctrine is supported by a vast mass of authority: Allen vs. Armstrong, 18 Iowa, 510 to 515; Rema vs. Cowan, 31 Iowa, 125 to 128; Bulkly vs. Callahan, 32 Iowa, 461 to 466; Clark vs. Thompson, 37 Iowa, 539; Easton vs. Perry, 37 Iowa, 682 to 683; Phelps vs. Meade, 41 Iowa, 470 to 474; Jackson vs. Morse, 18 Johnson, 441–3; Assurance Co. vs. Board, 24 Barbour, 166 to 169; Stewart vs. Schoenfeldt, 13 Serg. and Bawle, 360 to 381; Hubley vs. Keeper, 2 Penn. (Penrose & Watts), 501 to 502; Peters vs. Heasley, 10 Watts, 209; 18 How., U. S., 275, 281 to 285; Thomas vs. Lawson, 21 How. 341 to 342; Callahan vs. Hurley, 93 U. S. 387 *et seq.;* De Treville vs. Small, 98 U. S. 517 to 528; Keeley vs. Sanders, 99 U. S. 441; Sherry vs. McKinley, 99 U. S. 497; 102 U. S. 586 to 602, Springer vs. U. S.; 17 Wisconsin, 563 to 565, Smith vs. Cleveland; 23 Wisconsin, 617–8, Huey vs. Van Wie."

"The Supreme Court of the United States, in commenting on an Iowa statute, identical with Act 82, said: "The whole act exhibits an intention of the Legislature to enforce the payment of taxes by securing purchasers at tax sales in their purchases, and thus making it dangerous for owners of property to neglect payment of taxes due the State. It removes difficulties which had before existed in the way of establishing tax titles, and at the same time it works no injustice to owners of land subject to taxation." Callahan vs. Hurley, 93 U. S. 387.

"In a like case the same court said: 'The statute left to the owner of the lands every substantial right. It was his duty to pay the tax when it was due. His land was charged with it, and the proceedings ending in the sale was simply a mode of compelling the discharge of his duty. All his substantial rights were assured to him by the permission to show that he

owed no tax; that his land was not taxable; that he has paid what was due, or that he had redeemed his land after the sale. He was thus permitted to assert everything of substance; everything except mere irregularities. * * * There is no possible excuse for not enforcing such statutes according to their letter and spirit.' De Treville vs. Smalls, 98 U. S. 517.

"In a Pennsylvania case Ch. J. Tilghman said, in supporting a similar statute: "One can not without pain see a man divested of his property in a tract of 400 acres for a tax of less than $4. But if landholders will pay no attention to taxes, what is to be done? It must be presumed that every man knows the land he owns, and knows that taxes are imposed upon it annually, and sales made of the lands, the taxes on which are unpaid. It is within his own knowledge, too, that he has not paid them, and has thus been guilty of a breach of duty." Stewart vs. Schoenfeldt, 13 Serg. & R. 360.

"Nothing is urged against the sale in this case which was not urged in Lake's case.

"It is not pretended that the proceedings were lacking in any of the essential requirements above referred to.

"The only complaint is of certain irregularities in the assessments in non-compliance with the special requirements of the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential. Cooley on Taxation, p. 282. If the proceedings had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute was intended and was competent to heal." In the matter of Douglas, 41 La. An. 765.

In the Lake case, 40 An. 148, the Court said: "In the effort to enforce this ordinance, the Legislature passed Act No. 107 of 1880, and subsequently Act No. 98 of 1882, but great difficulty was experienced in giving good and sufficient titles to property sold under them, and the State was thereby

deprived of this source of revenue to a great extent; hence the passage of Act No. 82 of 1884 became a necessity. It deals exclusively with the *proceedings* necessary to effectuate sales of such property as are subject to such delinquent taxes and the execution and effect of tax titles evidencing such sales. It is a remedial law, authorized by the terms of said ordinance. * * * That such proceedings as those provided by this act constitute 'due process of law,' in the sense of the Constitution, has been so often decided that it may be classed as an elementary principle in matters of taxation. * * *

"The objection made to the effect that the Legislature was without power to pass a law declaring that a tax title shall be conclusive evidence, as provided in the act under discussion, has been virtually disposed of already, as we have ascertained that it has no reference to essential jurisdictional prerequisites. We think the law is constitutional, and the exception of no cause of action should have been sustained."

The cases of Lake and Douglas are the leading cases on this act, and the opinions of the Court in those cases demonstrate conclusively that the act is not liable to the objections leveled at it. The Court has held distinctly that with proper allegations tax debtors could attack the sale of property under this act, and that they were at liberty to show the absence of any of the essential jurisdictional prerequisites, but that as to non-essentials the Legislature could make the act of sale conclusive evidence.

In the Lake case it is said (40 An. 146): "Precedents are not wanting to show that in several sister States their Legislatures have been recognized as having the power of making such deeds conclusive as to the *non-essential* prerequisites, but the exercise of legislative power has never been sanctioned so as to make such deeds conclusive as to essential prerequisites. * *

"Do we understand that the statute under consideration makes a tax title conclusive as to either? No. What is meant by the phrases: 'That the property was assessed *according to law?* That the taxes were levied *accord-*

ing to law? That the property was advertised *according to law?* That the property was adjudicated and sold as stated in said deed?'

"Do they not necessarily imply that all these essentials had been fulfilled, and that the tax title is only made *conclusive evidence* that, if performed, they have been performed according to law? Does it not follow as a legal sequence that, as opponent's complaint is that his property was not assessed *in the name* of the true owner, and was illegally assessed in the name of John Boylan, it is precluded by the deed, because *it* furnishes conclusive evidence of the correctness of the assessment if made at all? It would seem so."

In the Douglas case (41 An. 769) the Court used the following language: "The only complaint is of certain irregularities in the assessment in non-compliance with the special requirements with the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential." Cooley on Taxation, p. 282: "If the proceeding had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute intended, and was competent to heal."

It is not alleged herein that there was no assessment at all, but, as in the Lake case, that the property *was* assessed but assessed in the wrong name. We think we have shown the assessment to have been correct, but even if the name was wrong, which we do not for a moment admit, we hold that such defect was healed by the curative statute; as was decided in Lake's case.

We maintain that it was within the power of the Legislature, under the command of the constitutional ordinance, to pass such a law as would validify, so far as sales under that law are concerned, an assessment in the name of one other than the owner of the property. It is settled, and was so decided in the Douglas case (41 An. 768), that "broadly stated the doctrine is, that the Legislature may make the tax

deed conclusive evidence of compliance with every requirement, which the Legislature might, originally, in the exercise of its discretion, have dispensed with."

Mr. Cooley in his work on Taxation, pp. 305 and 306, says: "The general rule has often been declared that the Legislature may validate retrospectively the proceedings which they might have authorized in advance. Therefore, if any directions of the statute fail of observance, which are not so far of the essence of the thing to be done that they must be provided for in any statute on the subject, the Legislature may retrospectively cure the defect."

If this is sound doctrine as to the general power of the Legislature, how much stronger is the reasoning when we have a constitutional mandate to the Legislature ratified by a vote of the people of the State to enact a law under which "complete" titles can be had?

It is well recognized that it is within the legislative discretion to tax property as such, and without regard to the name of the owner. It is done every day, and our own statutes provide—the last one being Act 85 of 1888—that it shall be the duty of the assessor (see Sec. 18) "to assess the same in the name of the owner, *except in case of unknown owners.*"

Here we have the property of unknown owners assessed simply as property. There is unquestionably an owner somewhere, but as he is "unknown" the property itself is made to contribute the amount of its tax, and in default of some one paying the tax it is sold for same in the manner provided by law.

This subject has been considered by Mr. Cooley, and in a note on page 399 we find that "under the Indiana statute an assessment is not void because not made in the name of the owner." And in the case of Thompson et al. vs. Lessee of Carroll et al., reported in 22 Howard, p. 433, the Court says: "Without inquiring whether this act repeals the 12th section of the previous act by implication, it shows plainly that the property assessed is considered as primarily liable for the tax, without regard to ownership * * * It is not necessary to the validity of the assessment and sale of the property taxed that the name of the true owner be ascertained."

In Witherspoon vs. Ducan 4th Wallace, 217, Mr. Justice Davis, as the organ of the Court, said: "It is not the policy of this Court to interfere with the revenue laws of the States, nor with the interpretation given to them by their Courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate a sale for taxes."

"Of course, the property must, under the compact, be taxable; but if it is, the mode of enforcing the payment of taxes is wholly within legislative control."

Therefore it is, we say, that the assessment of the property in the name of the owner, or without regard to that name, is a matter within the original discretion of the law-making power. It is not an indispensable jurisdictional prerequisite. This being so, and an assessment in the name of the owner not being essential to the exercise of the taxing power, an assessment in a wrong name comes legitimately within the purview of the healing statute, and may, by it, be retrospectively validified, and the deed made conclusive evidence of the correctness of such an assessment.

The Legislature, then, in providing that the tax deed shall be conclusive evidence of the performance *according to law*, if performed at all, of certain duties, which could originally have been dispensed with, has acted within the recognized scope of its authority, and the proceedings authorized by it constitute that "due process of law" referred to in the Constitution. In Murray's Lessee vs. Hoboken Land Co., 18 Howard, 272, the Court exhaustively reviewed this subject, and, in the course of its opinion, said: "For though 'due process of law' generally implies and includes *actor, reus, judex*, regular allegation, opportunity to answer and a trial according to some settled course of judicial proceedings (authorities), yet this is not universally true. There may be, and we have seen that there are cases, under the law of England after *Magna Charta*, and as it was brought to this country

and acted on here, in which process, in its nature final, issues against the body, lands and goods of certain public debtors without any such trial."

"The power to collect and disburse revenue, and to make all laws which shall be necessary and proper for carrying that power into effect, includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some other part of the Constitution * * * and whoever may have possession of the public money, until it is actually disbursed, the power to use those known and appropriate means to secure its due application continues. * * * It may be added, that probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding and sometimes by systems of fines and penalties, but always in some way observed and yielded to."

The distinction between "due process of law," as referring to ordinary matters of controversy between individuals, and matters of taxation, is marked, and the right of the government to proceed in a summary manner to collect its taxes is too well recognized to require argument. This Court held in McMillen vs. Anderson, 95 U. S. 37, that "a right to enjoin the proceedings, whereby the validity of the tax may be adjudicated, is due process of law."

And it has also been held that "notice by statute (publication) is generally the only notice given, and that has been held sufficient." Kentucky Railroad cases, 115 U. S. 321, quoting and approving 96 U. S. 97, 95 U. S. 37, 92 U. S. 575, 103 U. S. 370, 14 C. B. (U. S.) 180. Baker's Annotated Constitution, 216 and 217.

In endeavoring to establish the unconstitutionality of this act, counsel quotes freely from Saunders on Taxation, a Louisiana authority. The writer appreciates Mr. Saunders'

ability and judgment, and recognizes that any proposition to which he gives his assent has an earnest and conscientious advocate. But in this instance, Mr. Saunders' argument lacks the support of authority. It is but justice to that writer to say that his book was published in 1887, and that the decision in the Lake case, the first case decided under the act of 1884, was not handed down until 1888, fully a year after Mr. Saunders wrote. That case was followed by a line of decisions which have uniformly affirmed its doctrines. Mr. Saunders' views have several times been pressed upon the Supreme Court of the State with great earnestness, but in view of the thorough research which has been given to this question since he wrote, the Court has consistently declined to endorse his conclusions. Mr. Saunders has never been regarded as being self-opinionated, and it may well be doubted whether he would, to-day, after the repeated decisions of the Court, attempt to maintain the position assumed by him before those decisions were rendered. It should be remembered that when he wrote, the statute was unconstrued, and he had not the benefit of the Court's analysis, while the Court when interpreting the act was in full possession of all he had written.

Plaintiff in error bases his claim that the Louisiana statute of 1884 is unconstitutional largely, if not entirely, upon the decision of this Court in the case of Marx vs. Hanthorn, reported in 148 U. S. 172 to 185.

As we understand the Marx vs. Hanthorn case, this Court merely adopted the views of the Oregon Supreme Court in construing an Oregon statute; and that is what we contend the Court should do in construing the Louisiana Constitution and statute.

In our view Marx vs. Hanthorn does not bear out the contention of plaintiff in error. There is a material varianec between the Oregon statute and the Louisiana law. As stated in the Court's opinion the Oregon statute provided "all the proceedings required or directed by law in relation to the levy, assessment and collection of the taxes and the sale of the property shall be presumed regular, and to have

been done in accordance with law, and such deed shall be *prima facie* evidence of title in the grantee, and such presumption and such *prima facie* shall not be disputed or avoided, except by proof of either;" (one of four things.) In the course of its opinion the Court said: "The Legislature can not deprive one of his property by making his adversary's claim to it, whatever that claim may be, conclusive of its own validity, and it can not, therefore, make the tax deed conclusive evidence of the holder's title to the land."

This is precisely what the Louisiana law does not do.

Act 82 of 1884 provides that a "copy of which deed shall be *prima facie* evidence of the following facts: 1st. That the property conveyed was subject to taxation. 2d. That none of the taxes for which said property was offered were paid, and said deed shall be conclusive evidence of the following facts: 1st. That the property was assessed according to law. 2d. That the taxes were levied according to law. 3d. That the property was advertised according to law. 4th. That the property was sold and adjudicated as stated in said deed, and 5th. That all the prerequisites of the law were complied with by all the officers, from the assessment up to and including the execution and registry of the deed to said purchaser."

Observe the difference between the two laws. The Oregon statute prohibited the introduction of any evidence upon any point save the four named. The Louisiana law throws the door wide open as to all points except those named, and as to them, merely provides that upon the production of the deed the duties named shall be presumed to have been performed *according to law*, if performed at all. The tax debtor has his right reserved to show that they have *not* been performed, and if he can do so he defeats the sale. This was expressly decided in Lake's case, cited *supra*. See also Augusti vs. Lawless, 45 An. 1370; Edwards vs. Fairex, 47 An. 172.

In what way then does this statute deprive plaintiff in error of his property without due process of law? Is he not permitted to come into Court and show that his property was not assessed, or that his taxes were paid, or the property was not advertised for sale, or that the tax was not levied? Is

there any matter of real substance which he is prohibited from showing under proper allegations? "All his substantial rights were assured to him by the permission to show that he owed no tax; that his land was not taxable; that he had paid what was due, or that he had redeemed his land after the sale. He was thus permitted to assert everything of substance; everything except mere irregularities. * * There is no possible excuse for not enforcing such statutes according to their letter and spirit." De Treville vs. Smalls, 98 U. S. 517. Such was the language of this Court, and its application to the case at bar is peculiarly striking. Under the record, as made up in this case, we can not see wherein the tax debtor has room for complaint.

As we have already shown and as was demonstrated in the able opinion of Judge Fenner in the Douglas case, statutes of similar import have been sustained in this Court. The Marx vs. Hanthorn case, upon casual reading, might suggest the departure of the Court from the ancient rule, but we submit that a careful analysis of that decision will show that the Court merely followed its well established rule of following the State courts in construing State laws and constitutions. On page 184, the Court, in speaking of the question of notice, said: "These questions have been determined, so far as the laws and constitution of Oregon are concerned, by a recent decision of the Supreme Court of that State in the case of Strode vs. Washer," (17 Oregon, 50). Again, upon the same page, speaking of the power of the Legislature to regulate the evidential effect of the tax deed, and referring to the same decision, the Court said: "This decision was not made until after the trial of the present case (Marx vs. Hanthorn) in the Circuit Court of the United States; but in the absence of any previous decision of the Supreme Court of Oregon to the contrary, we regard it as a conclusive construction of the meaning and effect of the State statutes in question."

The objection raised by counsel that the act is violative of the 29th Article of the State Constitution, providing that each legislative enactment shall have but one object, has been

repeatedly decided against the contention of plaintiff in error. So also has his objection to the form of notice required, as being violative of Article 210 of the State Constitution, prescribing notice other than by publication for taxes accruing under the Constitution; as well as the healing effect of the statute upon the assessment of the property. In deciding this case, the Louisiana Supreme Court said (R., p. 85): "The question of the competency of this legislation in this respect has been before this Court on repeated occasions. The argument now addressed to us against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of this Court. To those decisions we must adhere, and hold the act precludes the inquiry. In the matter of Orloff Lake, 40 An. 142; *In re* Douglas, 41 An. 765; Breaux vs. Negrotto, 43 An. 43, *et seq.*"

"It is urged on us that the property not forfeited to the State prior to 1879 could not be sold without the notice specified in Article 210 of the Constitution. That article applies manifestly to sales for taxes levied since 1879. Sales of property for taxes prior to 1879 are governed by the ordinance for the relief of delinquent taxpayers and by the act of 1884, prescribing newspaper notice. In this case the advertisement gave the full name of plaintiff, adding her estate or heirs, and in our view the advertisement conformed to the requirements of the act."

This extract shows that assignments of errors Nos. 2 and 3 are totally unfounded. Proper advertisement was had and notice was given. The Court so held.

Assignment No. 5 has properly no place in this litigation. The question can not arise herein, as even if that provision were not in the act, its absence would not benefit plaintiff in error. The record shows (p. 29) that the amount, exclusive of interest and costs, due to the State for taxes upon this property for the years for which it was sold, was $38.50, and that the price paid to the State for same was $35, together with the assumption of all other taxes due. It thus appears that the State did not realize all that was due her, and that there was no surplus for the tax debtor to claim. But even

supposing that this Court shall decree said portion of the act null, although the question does not apply to and can not affect this case, the position of plaintiff in error will not be improved, as the nullity of that section will not strike with impotence the other provisions of the law.

As stated by the Louisiana Supreme Court in the Douglas case, 41 An. 770: "In conclusion we have not held that every feature of Act 82 is constitutional.

"In the application of such statutes it is well settled that they are to be enforced in so far as they do not violate the constitutional rights of the citizen as property owner, and restrained in so far as they do violate them." Allen vs. Armstrong, 16 Iowa, 510; McCready vs. Sefton, 29 Iowa, 356; Rinea vs. Cowan, 31 Iowa, 125, and other cases heretofore cited.

"Where, therefore, a part of a statute is unconstitutional, that fact does not authorize the Courts to declare the remainder void also. * * * If when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained." Cooley's Constitutional Limitations, 4th Ed., pp. 215, 216.

We have shown that the complaint of plaintiff in error is simply as to non-essentials, and that even that complaint is unfounded. Therefore his sixth assignment falls. The authorities are conclusive, that "the Legislature may validate retrospectively the proceedings which they might have authorized in advance. Therefore if any directions of the statute fail of observance, which are not so far of the essence of the thing to be done, that they must be provided for in any statute on the subject, the Legislature may retrospectively cure it." Cooley on Taxation, 306.

"It is no doubt true that there may be provisions of tax laws that are made in the interest of the public, and which do not concern the taxpayer; and a failure to punctiliously observe them may furnish him with no ground of complaint." Marx vs. Hanthorn, 148 U. S. 180.

The fourth assignment of error deals entirely with the alleged conflict between the tax law and Art. 29 of the State Constitution, and as this point has been repeatedly decided by the State Supreme Court, it may, in the language of that tribunal (see Record, p. 85), be said that "the interpretation we announce can not be deemed open."

The Constitution of Louisiana, like the fourteenth amendment to the Federal Constitution, contains in Art. 6 the provision that no person "shall be deprived of life, liberty or property without due process of law." The expression has the same meaning and application in both instruments. "In some form of words it is to be found in each of the State Constitutions; and though verbal differences appear in the different provisions, no change in language, it is thought, has in any case been made with a view to essential change in legal effect. * * * And by the fourteenth amendment, the guarantee is now incorporated in the Constitution of the United States." Cooley's Constitutional Limitatioms, 4th Ed., pp. 436 and 437.

The decisions interpreting and applying the act of 1884 show that this clause was given full consideration and the reasons stated in those cases have as much application to one instrument as they have to the other.

We maintain that there is no conflict between the Louisiana tax statute and the Federal Constitution. And specially that no issue of the kind was decided by the State Supreme Court. That tribunal decided the case upon its own accepted and uniform construction of the State Constitution and laws, as laid down in a series of cases, and its interpretation of said Constitution and laws, having by continuous application been crystallized into *rules of property*, upon which large vested rights are founded, this Court will not now disturb the same; but adhering to its own settled jurisprudence, will hold that the construction of those laws by the State Court will be followed by this Court.

The following extract from the decision of this Court in Burgess vs. Seligman, 107 U. S. 20, is especially clear upon this point, to-wit:

"The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to, that of the State Courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative decisions of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment, as they also always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or where there has been no decision of the State tribunal, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean toward an agreement of view with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunal, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well considered decisions of the State courts. As, however, the very object of giving to the national courts

jurisdiction to administer the law of the State in controversies between citizens of different States was to institute independent tribunal, which it might be supposed would be unaffected by local prejudices and sectional views, it would be a dereliction of their duty not to exercise an independent judgment *in cases not foreclosed by previous adjudication.*" The American Law Register and Review, 186; (the italics are not ours).

Upon this subject Mr. Cooley says:

"But the same reasons which require that the final decision upon all questions of national jurisdiction should be left to the national courts, will also hold the national courts bound to respect the decisions of the State courts upon all questions arising under the State Constitutions and laws where no question of national authority is involved, and to accept those decisions as correct, and to follow them whenever the same questions arise in the national courts." Cooley Constitutional Limitations, 4th Ed., 16.

In his note to the above Mr. Cooley quotes a cloud of authorities sustaining the proposition; among others Green vs. Neal's Lessee, 6 Peters, 291, where he says: "An important question was presented as to the proper course to be pursued by the Supreme Court of the United States, under somewhat embarrassing circumstances. That Court had been called upon to put a construction upon a State statute of limitations, and had done so. Afterward, the same question had been before the Supreme Court of the State, and in repeated cases had been decided otherwise. The question now was whether the Supreme Court would follow its own decision, or reverse that in order to put itself in harmony with the State decision. The subject is considered at length by McLean, J., who justly contends that 'adherence by the Federal to the exposition of the local law, as given by the Courts of the State will greatly tend to preserve harmony in the exercise of the judicial power in the State and Federal tribunals. This rule is not only recommended by strong considerations of propriety, growing out of our system of jurisprudence, but it is sustained by principle and authority. The Court accord-

ingly reversed its rulings to make them conform to those of the State Courts.' "

In conclusion we desire to call the special attention of the Court to the following pertinent language used by the Supreme Court of Louisiana in deciding this case (see Record, p. 85): "In all aspects of the case we think the defendant's title is protected by a line of decisions that no court should deem itself at liberty to overthrow, especially as they are based upon that provision of our organic law dealing with the subject of long deferred taxes left still unpaid after the liberal grace extended the owner by the ordinance."

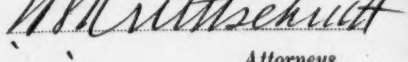
This is a fitting conclusion to the decision, and announces the settled determination of the Court to uphold by its judgment the acts of the officers of the State in all cases where those acts conform to the law; but at the same time the same court has not hesitated to declare null all adjudications under this law in which the issues presented involved a disregard of the elements essentially necessary to the valid exercise of the taxing power. Walsh vs. Harang and Husband, 48 An. 984; Augusti vs. Lawless, 45 An. 1370.

We therefore respectfully submit, first, that this case should be dismissed for want of jurisdiction on account of the failure of plaintiff in error to present the Federal question relied upon at the proper time and in the proper manner. And second, if we are wrong in this regard, that the decision of the State Supreme Court should be affirmed upon the ground that there is no conflict between the Federal Constitution and the Louisiana tax statute under which the sale was made.

Further, that this Court will not interfere with a State government in the orderly exercise of its taxing power; and finally that the facts presented in the record show conclusively that in this case all of the acts of the officers charged with executing the laws of the State were properly and legally performed, and the sale of the property of plaintiff in error for the taxes stated, operated an orderly and legal divestiture of title.

We therefore ask that the writ be dismissed, and that the judgment of the Supreme Court of the State of Louisiana rendered herein be maintained and affirmed.

RICHARD HENRY LEA,
THOMAS H. THORPE,



Attorneys.

No. 307.

Supreme Court of the United States

OCTOBER TERM, 1896.

RAFAEL MARIA DEL CASTILLO,

PLAINTIFF IN ERROR,

vs.

WALTER L. McCONNICO,

JOHN H. LANG,

HORACE C. REESE,

AND

WILLIAM H. FITZPATRICK,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on behalf of John H. Lang, Defendant in Error, on the motion to dismiss.

May it please your Honors:

The motion to dismiss is made on the following grounds, to-wit:

"That the allowance of the said writ of error is not justified by any law, for the reason that it does not appear from the record of this case or from any proceedings had

therein that there was drawn in question in this case the validity of any treaty or statute of, or an authority existing under the United States, or that there was drawn in question the validity of a statute of, or an authority existing under, any State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States; or that any title, right, privilege, or immunity was claimed under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States.

"And on the further ground that in fact none of the above mentioned questions were raised in this case."

The rule seems to be now well settled, as stated in the case of Crowell vs. Randell, 10 Peters, 391:

"That to give this Court appellate jurisdiction *two* things should have occurred and be apparent in the record: first, that some one of the questions stated in the section did arise in the Court below; and secondly, that a decision was actually made thereon by the same Court, in the manner required by the section. If *both* of these do *not* appear on the record, the appellate jurisdiction fails. It is *not* sufficient to show, that such a question *might* have occurred, or such a decision *might* have been made in the Court below. *It must be demonstrable, that they did exist, and were made.* The principal, perhaps the only important difficulty, which has ever been felt by the Court, has been in ascertaining in particular cases, whether these matters (the question and decision) were apparent on the record. And here the doctrine of the Court has been, that it is not indispensable, that it should appear on the record, in *totidem verbis*, or by direct and positive statement, that the question was made and the decision given by the Court below on the very point; but that it is sufficient, if it is clear, from the facts stated, by just and necessary inference, that the question was made, and that the Court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question, as *indispensable* to that judgment." (Italics ours.)

It also seems well settled that, "The conflict of the State law with the Constitution of the United States, and a decision by a State Court in favor of its validity, must

appear on the face of the record before it can be re-examined in this Court. It must appear in the pleadings of the suit, or from the evidence in the course of the trial, in the instruction asked for, or from exceptions taken to the ruling of the Court. It must be that such question was unecessarily involved in the decision, and that the State Court would not have given judgment without deciding it." R. R. Co. vs. Rock, 4 Wall., 180; Lawton vs. Walker, 14 Howard, 149; Mills vs. Brown, 16 Peters, 525.

It is likewise settled, that the opinion of the State Court constitutes no part of the record, and cannot be looked to as the foundation on which this Court will take or refuse jurisdiction. Rector vs. Ashley, 6 Wall., 148; Williams vs. Norris, 12 Wheaton, 117; Gibson vs. Chouteau, 8 Wall., 314; Kennebec R. R. vs. Portland R. R., 14 Wall., 25.

Nor will this Court have or take jurisdiction, if the judgment of the State Court *may* or *might* have been given on grounds which the law does not make cause of error. Kennebec R. R. vs. Portland R. R. *supra.*

It must be such a question as was necessarily involved in the decision, and that the State Court would not have given judgment without deciding it; and the cause for jurisdiction must appear *aliunde* the certificate of the State Court. Parmelee vs. Lawrence, 11 Wall., 38.

Having these principles in view, it seems clear to our mind that this Court is without jurisdiction, for it no where appears in any portion of the record that the alleged repugnancy of the State Statute to the Federal Constitution was at all drawn in question. The petition of the plaintiff in the case, (who is also the plaintiff in error,) merely sets out his alleged ownership to the property in controversy and the sale for taxes and subsequent transfers to the defendants in error. He also alleges their nullity, but no where does he attack the statute as being unconstitutional. Neither is the Federal question raised in any of the answers filed

by the respective defendants in error. On the contrary, that question seems to be entirely omitted from all of the pleadings in the case.

It will be observed that the record shows that *other matters were alleged* in the pleadings, upon which the State Court could clearly base its opinion and decree. For instance, the defendants, W. H. Fitzpatrick and H. C. Reese, set up a plea of estoppel. Lang, another of the defendants, also sets up a plea of estoppel, and makes the additional allegation that the plaintiff cannot maintain his suit, or recover judgment, because, as alleged by Lang, the property in controversy was sold to the State of Louisiana for taxes for the years 1880, 1881, 1882, and 1883, being for years *different* from those for which the property was sold under the statute which is directly attacked by the plaintiff, and under different and distinct laws of the State. Lang makes the further allegation that, in addition to the title under Act 82 of 1884, which is attacked by plaintiff, he redeemed the property from the State and acquired all the interests of the State which was conveyed by the sales for the said taxes of 1880 to 1883 inclusive. All of the defendants plead the general denial and set up and plead prescription to the suit or action of plaintiff, and they also plead the exception of no cause of action.

Reference to the record will demonstrate that a large amount of evidence was taken on the various issues thus raised by the pleadings, but it nowhere appears therefrom that a federal question was even referred to.

It will therefore readily be seen, that not only does the record not show that the federal question was directly raised or passed upon, but, on the contrary, the record shows affirmatively that *other questions* were raised and that the Court could well and, we urge, did, as a matter of fact, rest its opinion upon the other questions raised by the

pleadings and in the evidence, and did *not* take up or decide the alleged federal question referred to in the specifications of error.

Even if the Court should look to the opinion in this case, we earnestly and confidently urge that it will not appear therefrom that any federal question was raised or decided. It will be seen from the opinion of the State Court that the only constitutional question which was passed upon, or referred to, was the alleged conflict with the State Constitution, and that following the numerous previous decisions on the same point, the Court held that there was no conflict. But this is a question of which this Court has no jurisdiction, and with the decision of which your Honors will not interfere.

Having in view the settled jurisprudence of the State on the competency of the legislation under discussion, as shown by the number of cases referred to in the brief on behalf of this defendant in error on the merits, and also having in view the statement of the State Court in its opinion, that the argument addressed to the Court against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of the State Court to which the Court declares it must and does adhere, and the further statement by the Court that the defendant's title is protected by a line of decisions that no Court should deem itself at liberty to overthrow, it seems to us, that we can safely invoke the rule laid down and enforced in the cases of Bank vs. Bank, 14 Wall, 9; Palmer vs. Marston, ibid., 10; and Sevier vs. Haskell, ibid., 12, that: "Where a decision of the highest Court of the State in a case is made on its settled pre-existent rules of general jurisprudence, the case cannot be brought here under the twenty-fifth section; notwithstanding the fact that the State has subsequently made those rules one of the articles of its

Constitution, [or enacted them in a statute] and the case be one where, if the decision had been u[illegible] on the Constitution [or statute] *alone*, a writ of error under the said section might have lain," and ask that the writ of error be dismissed on that ground.

It would therefore seem that viewed from any standpoint, this Court has no jurisdiction, that the writ of error was not justified, and that it should, therefore, be dismissed.

Respectfully submitted,

J. ZACH. SPEARING,

Att'y for J. H. Lang, Defendant in Error.

New Orleans, April, 1897.

No. 307.

Supreme Court of the United States

OCTOBER TERM, 1896.

RAFAEL MARIA DEL CASTELLO,

PLAINTIFF IN ERROR,

vs.

WALTER L. McCONNICO,

JOHN H. LANG,

HORACE C. REESE,

AND

WILLIAM H. FITZPATRICK,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on behalf of John H. Lang, one of the Defendants in Error.

May it please your Honors:

The statute which is charged in this case with being unconstitutional is known as Act No. 82 of the Session of the Legislature of the State of Louisiana for the year 1884, and so much of the statute as is applicable to the case at bar is as follows, to-wit:

No. 82. AN ACT

"To provide for the sale of property bid in for and adjudicated to the State, and of property on which taxes are due the State prior to December 31st, 1879; to regulate in what manner said sales are to take place; to provide for the payment and cancellation of all encumbrances, and of all taxes due prior to December 31st, 1879; to establish the validity of sales made in compliance herewith; to provide for the payment of costs incurred under this Act, and for the payment of unpaid costs incurred in advertising and offering for sale immovable property to enforce the payment of taxes, which were due to the State prior to December 31st, 1879; and to provide how the payment into the State Treasury shall be made of money realized to the State from the enforcement of this Act.

"*Whereas*, under the provisions and terms of Act No. 98, of 1882, approved July 5th, 1882, and of laws in force, certain property has been offered for sale to enforce the payment of delinquent taxes due the State prior to December 31st, 1879; and,

"*Whereas*, at said sales, for want of a bid sufficient to pay the taxes due, a large quantity of property was bid in for and adjudicated to the State, by which adjudications the State has become possessed of a vast amount of real estate, but which is encumbered with unpaid delinquent taxes for many years, far exceeding in many instances the value of the property, and,

"*Whereas*, great difficulties have hitherto been experienced in giving good and sufficient titles to property sold for taxes, which fact has kept, and is keeping, such property out of market, thereby depriving the State of all present and future revenue from the same;

Section 1. "*Therefore be it enacted by the General Assembly of the State of Louisiana*, That it shall be the duty of each tax collector, and *ex-officio* tax collector, to immediately advertise for sale, at public auction, all property which has heretofore been or which may hereafter be bid in for the State, under the provisions of existing laws, and all property on which there remain unpaid taxes due the State prior to December 31st, 1879; that all such property shall be advertised, three times in thirty days, and in English only, the last advertisement to occur on the day on which said property is advertised to be sold. Such advertisements shall be full and sufficient notice to all per-

sons interested, and no other notice shall be required. The property shall be advertised by a description only sufficient to identify, describe or deliver the property. Such advertisements shall contain the name of the party in whose name the property was assessed, or the name of the present owner of the same, and said advertisements must designate the time and place of offering. If the sales advertised to take place on a specified day are not completed on said day, the same shall be continued over from day to day until the same are completed. In advertising said property for sale, the tax collector may include between one general heading and one general conclusion several pieces of property.

Section 2. *Be it further enacted, etc.*, That said property shall be adjudicated and sold to the last and highest bidder, for cash. All bids made may be paid in any lawful money of the United States, or in any warrant, bond or other obligation which by the laws and Constitution of the State is made receivable for taxes and licenses due the State prior to January 1st, 1879, except the costs incurred in adjudication to the State and in sales under this Act, and the commissions and fees established by this Act, which shall be paid by preference and in current money. All money realized to the State from the enforcement of this Act, which is required by the Constitution to be paid into the State Treasury to the credit of the outstanding obligations of the State and interests thereon, shall be so paid; but all such money which is not so required to be so paid, shall be paid into the State Treasury, to the credit of the Current or Free School Fund.

Section 3. "*Be it further enacted, etc.*, That each tax collector and *ex-officio* tax collector shall, as soon as said adjudications to bidders are made and complied with, execute to each purchaser a deed of sale in the name of the State, of each specific piece of property, before a duly qualified Notary Public by authentic Act, to be by him selected, a duly certified copy of which deed shall be *prima facie* evidence of the following facts: 1st. That the property conveyed was subject to taxation. 2d. That none of the taxes for which said property was offered were paid, and said deed shall be conclusive evidence of the following facts: 1st. That the property was assessed according to law; 2d. That the taxes were levied according to law; 3d. That the property was advertised according to law; 4th. That the property was adjudicated and sold

as stated in said deed; and, 5th. That all the prerequisites of the law were complied with by all the officers from the assessment up to and including the execution and registry of the deed to said purchaser; and duly certified copies of said deeds shall be full proof without further evidence of all contained therein. If only a portion of the taxes for which the property is sold are proved to have been paid, the sale and the title to the purchaser shall, nevertheless be good and valid, the same as if all the taxes for which it is sold had not been paid.

Section 4. *Be it further enacted, etc.*, That all the sales under this Act shall vest in the purchaser an absolute and perfect title to the property conveyed without redemption, and it shall be the duty of any Court having jurisdiction of the value of property sold to issue an order to the sheriff, upon representation of a duly certified copy of the deed, commanding him to forthwith seize the property described in said deed; and after three days' notice of such seizure, to either the former owner or the occupant of said property, the sheriff shall put the purchaser into actual possession of the property, unless enjoined by a Court having jurisdiction of the property. If the property is vacant it shall only be necessary for the sheriff to post, for one week in some conspicious or usual place, a copy of the notice of seizure, after the expiration of which delay, unless enjoined, he shall put the purchaser into possession. In case the State shall fail to give to the purchaser an absolute title to the property sold, or if said title shall be duly declared null and void for any cause, the amount paid by the purchaser to the State for such property shall be refunded by the tax collectors to the purchaser.

Sec. 5. *Be it further enacted, etc.*, That the price bid and paid for said property shall be in full and final payment and satisfaction of all State, City, Parish and Municipal taxes due on same prior to December 31st, 1879, together with all interests, costs and charges, on the same, and the recordation of the deed of sale, or of a duly certified copy of the same in the mortgage office, shall operate as a cancellation of all conventional, legal and judicial mortgages, and of all taxes, tax liens, tax privileges and tax mortgages due prior to December 31st, 1879, with all interest, costs and charges thereon on the property sold. If the price paid for said property is not sufficient to pay in full all costs and charges herein set forth and the taxes due prior to Debember 31st, 1879, with interests, costs and

charges thereon due by said property, then the price after the payment of the costs and charges herein provided to be first paid, shall be divided and distributed proportionately to the payment of all unpaid State, City, Parish and Municipal taxes, interests, costs and charges due on, or by the property prior to December 31st, 1879. The purchaser shall however assume and promise to pay, and shall take said property subject to all unpaid taxes on the same due subject [subsequent] to December 31st, 1879. The balance remaining of the price of the said sales, after the payment of all the costs and charges herein provided to be paid of all unpaid taxes due prior to December 31st, 1879, shall be paid into the State Treasury, as herein provided.

This statute was passed pursuant to and by virtue of an article contained in the present Constitution of the State of Louisiana, adopted in 1879. The article referred to is one of the "Miscellaneous Ordinances" of that Constitution and was passed for the relief of the then delinquent tax payers, and is as follows, to-wit:

"Article 1. *Be it ordained by the people of the State of Louisiana in Convention assembled*, All interests, penalties, costs, fees and charges whatever on taxes and licenses due the State, or any political corporation therein, prior to the first day of January, 1879, and yet unpaid, are remitted, and all property forfeited to the State or any political corporation, on account of non-payment of taxes and licenses, or to which the State or any political corporation now has a title, shall be redeemable, and the title to the State or any political corporation thereto annulled upon the payment by the debtor, or any interested party, of the principal of all taxes and licenses that may be due thereon at the date of redemption, and this right of redemption shall continue until the first day of January, 1881. In the event the principal of said taxes and licenses is not paid by said time the interest, penalties, costs, fees and charges hereinbefore remitted shall revive and attach to the property upon which the taxes and license are due, and such property shall be then sold in the manner to be provided by law, and the title of the purchaser shall be full and complete; *provided*, that nothing herein contained shall be construed as affecting the rights of third persons who may have purchased property, legally assessed and sold at tax sales, or from the State, or any political cor-

poration, after the same was legally forfeited to or purchased by the State or such corporation; and, *provided further*, that nothing in this ordinance shall be taken as granting any time for the payment of the principal of said taxes and licenses; *and provided further*, that interest shall accrue and be collected on the principal of said delinquent taxes and licenses at the rate of eight per cent. per annum from January 1st, 1880; and on all said taxes and license paid a discount of ten per cent. per annum shall be allowed from the date of payment to January 1st, 1881."

It will be observed that the article in the Constitution provided and granted relief to the then delinquent tax payers of the State by not only remitting the interest, penalties, costs, fees and charges on the taxes which were unpaid, but gave the former owners, or any other person interested, the privilege of redeeming from the sales to the State, property which had actually been sold to it, by the payment of simply and only the principal of the taxes, without any interest, penalties, costs, fees or charges, with the provision that the right thus given should continue until the first day of January, 1881. It will also be observed that the article further provided that if the tax payers did not take advantage of the relief granted by the article then that all of the interests, costs, penalties, fees, and charges should revive and attach to the property and that the property should then be *sold in the manner to be provided by law*, and the *title* of the purchaser *should be full and complete*. It should be noted here, that the grant of authority by the people to the Legislature, as thus contained in the organic law, was unrestricted, the provision of the article in the Constitution being simply and only that the property should be "sold in the *manner to be provided by law*, and the title of the purchaser *shall be full and complete*."

The statute under consideration (Act 82 of 1884) was, as herein above stated, passed by virtue of and pursuant

to this special provision of the State Constitution, and the reasons for the passage of the statute are fully explained and set out in the preamble to the statute.

Previous to the passage of Act 82 of 1884, there was practically no law in the State under which the State could properly enforce the payment of the taxes by the sale of the delinquent's property. For this reason a vast amount of taxes remained unpaid when the Constitutional Convention met in 1879, on which the interests, penalties, costs, fees and charges were simply enormous; so much so that in many instances the total amount due by and on the property far exceeded its value. It was for the purpose of relieving the tax payers of this heavy burden and of inducing them, as it were, to reclaim their property and to again place it in commerce, so that it would not only be useful and profitable to the tax payers but would be a source of revenue to the State, that the "ordinance" for their relief was inserted in the Constitution, the idea of the Convention being that the owners of the property would take advantage of the grace granted in the ordinance for their relief, and would pay the face of the taxes without interests, or other charges. But the Convention also realized that some persons would not take advantage of the tendered relief and that it was and would be necessary to *specially provide for the sale* of the property on which taxes were due, and the Convention also realized the necessity for the passage of some law, which, while protecting the rights of the land owners, would, at the same time, be the means of enforcing the rights of the State; hence the provision and special authority for the sale of the property in the *manner to be provided by law*, and that the *title should be full and complete.*

As stated in the preamble to the statute under consideration, previous efforts had been made to carry into effect the provisions of the Constitution herein above referred to,

but without success, and the Legislature foresaw the necessity for the passage of some law that would enable the State, in a measure, to collect its unpaid taxes, and again put into commerce the property on which the taxes were due.

The beneficial effect of this legislation, and of the now settled jurisprudence of the State upholding and enforcing the statute, can not be over estimated; the records of the tax offices and of the Conveyance books will show that large numbers of properties which hitherto were out of commerce, and on which no taxes had been paid for many years are now being transferred in regular course of trade, and the taxes thereon regularly paid into the coffers of the State, all as the result of the sales under the statute, and of the decisions of the State Supreme Court maintaining the validity thereof.

In fact the State Supreme Court has so often and uniformly maintained the validity of the sales under Act 82 of 1884, where the terms of the statute were complied with, that the provisions thereof and the decisions of the Supreme Court interpreting and enforcing the same have now become a "rule of property" in the State, to overthrow which will cause incalculable damage, confusion and wrong to many of the citizens who have parted with their money on the faith of the statute and decisions, which we do not think this Honorable Court will do without grave consideration. It seems to us that the effect and regularity of the statute has been so often maintained by the State Supreme Court that we can safely invoke the now well settled rule and jurisprudence of this Court, that it will follow the decisions of the State Court in interpreting and enforcing the statute of the State.

The first case in which this statute was submitted to the State Supreme Court for interpretation was "In the Matter

of Orloff Lake, Praying for a Writ," decided in February, 1888, reported in 40 La. An., p. 142. In that case all of the questions which are now raised by the plaintiff in error in the instant case were raised by the opponent, who was the former owner of property sold under the tax statute, as is the plaintiff in error here. In fact the allegations made by opponent there, and the proof adduced by him, were much more serious and more strongly against the validity of the sale, and against the constitutionality of the statute than are the "specifications of error" by the plaintiff in error, as will be seen from the following extract from the opinion in Lake case, stating the grounds of opposition made by the opponent there, to-wit:

"That the advertisement of said property for sale, and said adjudication and sale, are illegal and void on the following grounds, viz:

"*a.* Because the property was not assessed for any of said years, 1872 to 1878, in the name of said Mrs. H. P. Harrison, or D. C. Harrison, the owner thereof, during said years; that same was illegally assessed in the name of John Boylan, who was never the legal owner of said property.

"*b.* Because said property was insufficiently and illegally described on the assessment rolls for said years 1872 to 1878, inclusive; that the description of said property on the assessment rolls for said years was not in accordance with law.

"*c.* Because, neither said D. C. Harrison, nor any person interested in said property ever received any *notice of the assessment* of said property for any of said years, or any notice that any taxes were due on same for said years, or any notice that said property would be advertised or sold to enforce the payment of said taxes, nor did any one interested in said property receive any notice of said sale.

"*d.* Because the State taxes on said property for the year 1873 had been paid previous to said advertisement and sale.

"*e.* Because said advertisement was contrary to the provisions of Act 82 of 1884, said property having been ad-

vertised as that of Mrs. H. P. Harrison, or her estate and heirs (as) the present owners.

"*f*. That if Act 82 of 1884, authorized the tax collector to change the assessment of the property, or to advertise the same otherwise than as it was assessed, it was an unconstitutional law.

"*g*. Because said property was never adjudicated to the State, and was not so advertised, and that same was simply advertised for sale to enforce the payment of delinquent taxes, and said advertisement and sale was contrary to the provision of Act 82 of 1884, as it only provided for the sale of property that had been previously adjudicated to the State.

"8. That Act 82 of 1884, is unconstitutional on the following grounds, viz:

"*aa*. Because all the objects of the Act are not expressed in the title.

"*bb*. Because the Act comprises, deals with and legislates on more than one object.

"*cc*. Because it provides for the divestiture of title to property 'without due process of law.'

"*dd*. Because said Act is retrospective in its provisions, and operates as a divestiture of vested rights.

"*ee*. Because said Act provides for notice by public citation only, in violation of Article 210 of the Constitution.

"*ff*. Because said Act does not provide for, nor allow the right of redemption, in violation of said Article 210.

"*gg*. Because said Act confers upon tax collectors judicial powers in violation of Articles 14, 15, 80 and 210 of the Constitution.

"*hh*. Because it is beyond the power of the Legislature to provide that an act (of sale) shall be *conclusive* evidence, as provided in said Act."

The opinion in the Lake case herein above referred to was rendered on the rehearing of that case, the Court having previously decided against the validity of the sale in question. In passing on the constitutionality of the statute, and on the ground that it was beyond the power of the Legislature to provide that an act of sale shall be con-

clusive evidence as provided in the statute, the Court, after copying in its opinion that part of Section 3 of the statute which makes the tax collectors deed conclusive evidence of certain facts and *prima facie* evidence of other facts, uses the following language, viz:

"We are to ascertain what is the true and correct import of the language employed in the legislative enactment, insofar as same bears on this controversy.

"In our (original) opinion on the first hearing of the case, we said: 'That precedents are not wanting to show that in several sister States their Legislatures have been recognized as having the power of making such deeds *conclusive* as to non-essential prerequisites, but the exercise of legislative power has never been sanctioned, so as to make such deeds *conclusive* as to *essential prerequisites.*'

* * * * * *

"It would serve no useful purpose to enter into an examination of the prerequisites which are deemed essential and non-essential, as for the purpose of this case it is amply sufficient to say that all the decisions and commentators agree that the *omission to assess at all* the property to which the deed is made, is a radical, or fatal defect which strikes the proceedings with nullity.

"On this hypothesis we expressed the opinion that the opponent had a right to attack the act of sale in question, and to show that the property had *never* been assessed; and, upon an examination of the evidence adduced in support of opponent's assault upon it, we came to the conclusion that lots 5 and 8 had never been assessed at all.

"A re-examination of the record has induced us to modify our opinion in some particulars, but without altering our conclusions with regard to the law.

"Reference to the paragraphs we have quoted from the petition of opponent, will disclose that he does not allege that *no assessment* was made at all, but that he does not allege that: 'The property was not assessed *in the name* of Mrs. H. P. Harrison, etc;' 'That same was *illegally assessed in the name* of John Boylan,' and that it was 'illegally and insufficiently described on the assessment rolls, etc.'

"The opponent does not allege that the property was not subject to taxation, or that *all* the taxes for which the

property was sold had been paid. Of these ingredients the act of sale furnishes *prima facie* evidence, and not being assailed for the want of either, it is full proof of their existence.

"This view necessitates an examination of the statute, the constitutionality of which is drawn in question, and a comparison of it with the several charges preferred against the tax title.

"It was well settled by the decisions of this Court, as well as those of the Courts of our sister States, that the *essential, jurisdictional* prerequisites for the exercise of the taxing power are, viz:

"1st. The *listing* and *assessing* of the property.

"2nd. A *levy* of the tax upon it.

"3rd. The statutory warrant for its sale.

"4th. A sale made under this statutory warrant.

"Do we understand that the statute under consideration makes a tax title conclusive as to either? No. What is meant by the phrase: 'That the property was assessed *according to law?*' 'That the taxes were levied *according to law?*' 'That the property was advertised *according to law?*' 'That the property was adjudicated and sold *as recited in said deed?*'

"Do they not necessarily imply that all those essentials had been fulfilled, and that the tax title is only made conclusive evidence that, if performed, they had been performed 'according to law ?' Does it not follow, as a legal sequence, that, as opponent's complaint is that his property was not assessed *in the name* of the true owner, and was illegally assessed *in the name* of John Boylan, it is excluded by the deed, because it [the deed] furnishes conclusive evidence of the correctness of the assessment, if made at all? It would seem so.

* * * * *

"Opponent's complaint is not well founded, because it is of non-essentials, which are cured by the execution of the tax title.

"With regard to the alleged unconstitutionality of the law, we think opponent is in error. A simple inspection of the title of the act will suffice to show that its object is set forth distinctly, and a perusal of the act will disclose that its *only* object was to enforce the ordinance for the relief of delinquent tax payers.

"We do not regard the provision of the statute, in any sense, retrospective; nor can we perceive in what way they can divest vested rights. The Legislature only intended to provide the manner in which *valid* sales could be effected of property on which delinquent taxes are due the State prior to the year 1879, and whereby such taxes could be collected.

"The ordinance referred to provides that 'all interests, penalties etc., * * on taxes and licenses due the State * * prior to the first day of January, 1879, and yet unpaid, are remitted,' etc.

' * * * * *

"'In the event the principal of said taxes and licenses is not paid by said time, the interest, penalties, etc., * * hereinbefore remitted, shall revive and attach to the property upon which the taxes and licenses are due, and *such property shall then be sold, in the manner to be provided by law, and the title of the purchaser shall be full and complete*,' etc.

"In the effort to enforce this ordinance, the Legislature passed Act 107 of 1880, and, subsequently, Act No. 98 of 1882; but great difficulty was experienced in giving good and sufficient titles to property sold under them, and the State was thereby deprived of this source of revenue to a great extent; hence, the passage of Act 82 of 1884 became a necessity. It deals exclusively with the *proceedings* necessary to effectuate sales of such property as are subject to such delinquent taxes, and the execution and effect of tax titles evidencing such sales. *It is a remedial law authorized by the terms of said ordinance.*

* * * * *

"That such proceedings as those provided by this Act constitute 'due process of law,' in the sense of the Constitution, has been so often decided, that it may be classed as an elementary principle in matters of taxation.

"The provisions of Article 210 of the Constitution of 1879, have *exclusive* reference to the taxes that may be assessed under laws passed in pursuance thereof; and those of the ordinance for the relief of delinquent tax payers, to delinquent taxes that were assessed in years antecedent to its adoption by the people.

"All tax sales made in pursuance of Article 210 are redeemable within one year; but those made in pursuance of said ordinance and law are not redeemable at all.

"We do not think the Act confers judicial powers on tax collectors.

"The objection made to the effect that the Legislature was without power to pass a law declaring that a tax title shall be conclusive evidence, as provided in the Act under discussion, has been virtually disposed of already, as we have ascertained that it has no reference to essential, jurisdictional prerequisites. We think the law is constitutional, and the exception of no cause of action should have been sustained."

The decision in the Lake case was followed by one "In Re. Douglas, Praying for a Writ, etc.," decided in July, 1889, reported in 41 La. An., p, 765, where practically the same grounds of objection as were urged in the Lake case, and as are now urged in the case at bar, were also set up by the opponent.

The opinion in the Douglas case, just referred to, is so applicable to, and so strongly in favor of, the validity of the statute, and of the contention of the defendant in error, that we take the liberty of quoting from that opinion *in extenso*. The Court says:

"The Act 82 of 1884, is a remedial and healing statute, similar to others which have been passed in many States of the Union, the effect of which is to cure defects in prior tax proceedings by making the tax deeds conclusive evidence that the requirements of the law in certain matters had been complied with.

"Such statutes have been frequently subjected to judicial consideration and review.

"The principle is universally acknowledged that where the property is taken in the valid exercise of the taxing power, the owner is not deprived of it 'without due process of law,' within the meaning of the prohibitions on that subject contained in the State and Federal Constitutions. McMillen vs. Anderson, 95 U. S. 40; Davidson vs. New Orleans, 96 U. S. 97.

"There are, however, certain requirements absolutely essential to constitute a valid exercise of the taxing powers, without which no tax sale could be validly made. The chief of these indispensable prerequisites are:

"1. That a tax has been levied.

"2. That the property sold is subject to taxation.

"3. That the property has been assessed.

"4. That the taxes had not been paid.

"5. A statutory warrant for the sale.

"6. A sale made under such warrant.

"Any statute authorizing the sale of a man's property for taxes which had not been levied, or where the property was exempt from taxation, or where the property had not been assessed, or where the taxes had been duly paid, would unquestionably be a taking in excess and outside of the taxing power, and such taking would not be with 'due process of law.'

"So any statute which should attempt to cure such substantial defects, or should attempt to debar the owner from proving, in defense or assertion of his right, that a pretended tax sale was wanting in any of these essential prerequisites, would violate the constitutional prohibition and could not be enforced.

"But outside of these fundamental and quasi-jurisdictional requirements, and with reference to the time and manner in which the tax proceedings shall be conducted, *the legislative discretion is supreme*, and cannot be judicially controlled.

"As the Legislature may, in advance, prescribe and direct the time and manner in which these shall be done, it may likewise provide that failure to comply with such directions shall not defeat the sale, and may constitutionally provide that the tax deed shall be conclusive evidence that such directions were complied with, as to time, manner and every other matter originally within the legislative discretion.

"Broadly stated, the doctrine is, that the Legislature may make the tax deed conclusive evidence of compliance with every requirement which the Legislature might, originally, in the exercise of its discretion, have dispensed with.

"As stated by Judge Cooley: 'The general rule has often been declared that the Legislature may validate, retrospectively, the proceedings which they might have authorized in advance.' Cooley on Taxation, p. 229.

"He states certain exceptions, however, to the general rule which have no application in the instant case.

"This doctrine is supported by a vast mass of authority: Allen vs. Armstrong, 18 Iowa, 510 to 515; Rema vs. Cowan, 31 Iowa, 125 to 128; Bulkly vs. Callahan, 32 Iowa, 461 to 466; Clark vs. Thompson, 37 Iowa, 539; Easton vs. Perry, 37 Iowa, 682 to 683; Phelps vs. Mead, 41 Iowa, 470 to 474; Jackson vs. Morse, 18 Johnson, 441-3; Assurance Company vs. Board, 24 Barbour, 166 to 169, Stewart vs. Schoenfelt, 13 Sergt. and Rawle, 360 to 381; Hubley vs. Keeper, 2 Penn. (Penrose and Watts), 501 to 502; Peters vs. Heasley, 10 Watts, 209; 18 How., U. S. 275, 283 to 285; Thomas vs. Lawson, 21 How. 341 to 342; Callahan vs. Hurley, 93 U. S. 387, *et seq.;* De Treville vs. Smalls, 98 U. S. 517 to 528; Keeley vs. Sanders, 99 U. S. 441; Sherry vs. McKinley, 99 U. S. 497; 102 U. S. 586 to 602, Springer vs. U. S.; 17 Wisconsin, 563 to 565, Smith vs. Cleveland; 23 Wisconsin, 617-8, Huey vs. Van Wie.

"The Supreme Court of the United States, in commenting on an Iowa statute, identical with Act 82, said: 'The whole Act exhibits an intention of the Legislature to enforce the payment of taxes, by securing purchasers at tax sales in their purchases, and thus making it dangerous for owners of property to neglect payment of taxes due the State. It removes difficulties which had before existed in the way of establishing tax titles, and at the same time it works no injustice to owners of land subject to taxation.' Callahan vs. Hurley, 93 U. S. 387.

"In a like case the same Court says: 'The statute 'left to the owner of the lands every substantial right. It was his duty to pay the taxes when it was due. His land was charged with it, and the proceeding ending in the sale was simply a mode of compelling the discharge of his duty. All his substantial rights were assured to him by the permission to show that he owed no tax; that his land was not taxable; that he had paid what was due, or that he had redeemed his land after the sale. He was thus permitted to assert everything of substance; everything except mere irregularities. * * *There is not possible excuse for not enforcing such statutes according to their letter and spirit.*' De Treville vs. Smalls, 98 U. S. 517.

"In a Pennsylvania case, Ch. J. Tilgham, said, in supporting a similar statute: 'One cannot, without pain, see a man divested of his property in a tract of 400 acres for a tax of less than four dollars. But if land holders will pay no attention to taxes, what is to be done? It must be pre-

sumed that every man knows the land he owns, and knows that taxes are imposed on it annually, and sales made of the land, the taxes on which are unpaid. It is within his own knowledge, too, that he has not paid them, and has thus been guilty of a breach of duty.' Stewart vs. Schoenfeldt, 13 Serg. and R. 360.

"Nothing is urged against the sale in this case which was not urged in Lake's case.

"It is not pretended that proceedings were lacking in any of the essential requirements above referred to.

"The only complaint is of certain irregularities in the assessment in non-compliance with the special requirements of the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential. Cooley on Taxation, p. 282.

"If the proceedings had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute was *intended, and was competent to heal.*

"We might have rested our decision upon Lake's case, but we have deemed advisable to express our views more at length, because our attention has been called to a curious misapprehension of the doctrine announced by us, which seems to exist in the minds of our learned brothers of the Court of Appeals, (an inferior appellate Court,) and of certain District Judges. They seem to consider that the doctrine in Lake's case is in conflict with the prior jurisprudence of this Court, and with two of our very recent decisions on the subject sufficiency of the description required to constitute a valid assessment. The cases referred to are Bell vs. Taylor, 37 An. 56, and Kearns vs. Collins, 40 An. 453.

"A reference to those cases will show that the sales therein concerned were *not* made under Act 82 of 1884, and were *not*, in any manner, governed by that statute. The validity of the tax proceedings, therefore, depended on their compliance with the provisions of the particular revenue laws under which they were taken. There had been no healing statute curing deficiencies or making the tax deeds conclusive. Therefore the doctrine of Lake's case

had no application, and the decisions present no sort of inconsistency.

"The suggestion of the decision in Lake's case conflicts with prior jurisprudence is utterly untenable, because there exists *no* prior jurisprudence in this State on the same subject matter. Act 82 of 1884, was the first healing statute of that character passed in this State, and Lake's case was the first decision interpreting and applying such a statute.

"Therefore, the conflict suggested is entirely imaginary. In construing and enforcing the statute we have found no precedents in this State, and have been compelled to seek them in the jurisprudence of other States, and of the Supreme Court of the United States, which amply and firmly supports the doctrine announced by us."

It is well to note here that, as stated in the opinion in the Douglas case, as well as in the opinion in the Lake case, the statute under consideration provides that the tax collector's deed shall be only *prima facie* evidence of the essential prerequisites to the valid exercise of the taxing power, and it fully and amply protects the delinquent tax payer in his rights. That is to say, the statute makes the tax collector's deed only *prima facie* evidence of the regularity of the essential prerequisites, and that it *provides for a notice* to the delinquent tax payer. True, the notice provided for in the statute is by publication, but the jurisprudence of the whole country is so well settled that notice, especially in tax proceedings, can be given by publication, that a reference to any authority on that point would be superfluous, and a reflection on the intelligence of the Court. The statute provides that the advertisement shall contain the name of the party in whose name the property was assessed, or the name of the present owner of same. The record shows that the advertisement in the instant case contains the *full name* of the plaintiff in error, and the notice is to him as the present owner. See tax collector's deed, Tr. 28 to 30, and copy of advertisement, Tr. 39 and 40.

It seems incomprehensible to us that it can be successfully contended, or that the Court will hold, that this was not full and ample notice to the plaintiff in error, who was the delinquent tax payer.

There is no pretence that the statute makes the tax collector's deed conclusive evidence of the regularity of any of the essential prerequisites, or that the plaintiff in error was prevented, either by reason of the provisions of the statute, or otherwise, from proving or showing the non-existence of any of the said essential prerequisites. On the contrary, the truth is, the plaintiff in error, upon the trial in the Court of the first instance, was permitted to offer and did offer evidence on all of the points of which the statute makes the tax collector's deed conclusive evidence. Thus, as will be seen from the note of evidence on behalf of plaintiff in error, (Tr. 14 and 15), he was permitted to offer a copy of the assessment rolls (Tr. 64 and 65 , whereas the statute makes the tax collector's deed conclusive evidence of regularity of the assessment. Again, the plaintiff in error was permitted to offer a copy of the advertisement of sale (Tr. 39), notwithstanding the fact that the statute makes the tax collector's deed conclusive evidence that the property was advertiséd according to law.

However, the advertisement which was offered by the plaintiff in error, shows that all of the provisions of the statute were fully complied with, and that the notice thereon was to the plaintiff in error, by his full and correct name. (Tr. 39 and 40).

The decision in Douglas case was followed two years after, by the case of Surget vs. Newman, 43 La. An. 873, wherein the constitutionality of Act 82 of 1884, was again brought in question, and the Court there reaffirmed its previous decisions maintaining the validity of the statute.

This was repeated in the cases of Henderson vs. Ellerman, 47 La. An. 306; Dibble vs. Leppert, ibid., 792; Michel vs. Stream, 48 La. An. 241; Polland vs. Dreyfous, ibid., 83, and in the instant case, 47 La. An. 1473.

So firmly have the principles in the above mentioned cases become engrafted upon the jurisprudence of this State, and so thoroughly have they becomes "rules of property," that our Supreme Court has decided that a title under Act 82 of 1884 is such as will justify the Court in enforcing the specific performance of an agreement to purchase real estate, notwithstanding the fact that the only title held by the obligee is a tax title under the statute. See Martin vs. Lagenstein, 43 La. An. 789, and W. H. Fitzpatrick vs. H. C. Leak, decided March 1st, 1897, not yet reported.

Even in the instant case, as the record shows, the District Court of the Parish of Orleans compelled, by judgment, two of the defendants in error,(Reese and Fitzpatrick,) to accept the identical title in controversy in this case, from Lang, under an agreement by the former to purchase the property from the latter.

A comparison of the provisions of Act 82 of 1884, of Louisiana, which are complained of as being unconstitutional, with Section 784 of Iowa Revision of Statutes of 1860, will demonstrate that the provisions of the two laws are practically identical; they are "*idem re et sensu*," if not "*idem syllabis seu verbis.*" While the statute of Louisiana has not previously been before this Court for interpretation the law of Iowa has had the sanction of this Court in more than one case.

In discussing the question under consideration, the constitutional grant of authority to the Legislature which has been previously referred to, must be constantly borne in mind, for it is doubted, *if ever before* a Legislature was given such

a *specific* and *full* grant. No such specific authority in a constitution has ever come under our observation, and no such specific constitutional authority is referred to in any of the decisions affirming the constitutionality of laws identical with Act 82. If then, without such a specific grant of authority, courts have affirmed the constitutionality of laws similar to Act 82, *with how much more force do the reasonings of the courts and the principles enunciated in such cases, apply to cases arising under Act* 82, which was passed under the above constitutional grant?

In the case of Callahan vs. Hurley, 93 U. S. 387, this Court maintained the tax sale under the Iowa statute, using the following language, which is particularly applicable to the case at bar, viz:

"Before examining the objections to the validity of the tax deeds which the original bill and its amendments suggest, it will be convenient to notice the provisions of the statutes of the State respecting tax sales and respecting the *effect* of treasurer's deeds for land sold for delinquent taxes. * * "

"We quote a part of Sec. 784 of the Act, as having a *controlling* operation upon the facts of the present case. It is as follows:

"The deed shall be *prima facie* evidence * * of the following facts:

"1. That the property was subject to taxation."

"2. That the taxes were not paid before the sale."

"3. That the property conveyed had not been redeemed 'at the date of the deed.'"

And shall be *conclusive* evidence of the following facts:

"1. That the property had been *listed* and assessed."

"2. That the taxes were levied according to law."

"3. That the property was advertised for sale in the manner and for the length of time required by law."

"4. That the property was sold for taxes as stated in the deed."

"5. That the grantee named therein was the purchaser."

"6. That the sale was conducted in the manner required by law."

"7. That all the pre-requisites of the law were complied with by all the officers, . . . except in regard to the *three* points named in this section where the deed shall be *prima facie* evidence only."

* * * * *

"The whole act exhibits an intention of the legislature to enforce the *payment* of taxes by securing purchasers at tax sales in their purchases, and thus making it *dangerous* for owners of property to neglect payment of taxes due the State. It removes difficulties which had before existed in the way of *establishing* a tax-title, and at the same time it works *no* injustice to owners of land subject to taxation.

* * * * *

"*All* the questions presented in this case, have been *decided* by the Supreme Court of Iowa, and decided *adversely* to the complaint. *Phelps vs. Meade, et al.*, 41 *Iowa*, 470. The case was an attempt to set aside a tax deed of lands sold by the treasurer of Cass County at the sale in January, 1864. The averments of the bill were the *same* as those made in *this* case, and the case was heard upon the evidence taken upon the case now before us. The *rulings* of the Court were, that, if there was a *bona fide* sale *in substance* or *in fact*, the tax deed is *conclusive* evidence that it was made at the proper time and conducted in the proper manner."

It will be noticed that in the case cited, this Court followed the ruling of the State Court, and we respectfully urge that the same course should be pursued in the case at bar, especially as the statutes under consideration are the same; and, in addition to that fact the statute referred to in the instant case was passed under the special constitutional grant which has been hereinabove quoted and discussed.

In another case, Witherspoon vs. Duncan, 4 Wall., 217, this Court uses the following language, viz:

"It is not the province of this Court to interfere with the revenue laws of the State, nor with the interpretation given them by their Courts. Arkansas has the right to determine the *manner of levying* and *collecting* taxes,

and can declare that the particular tract of land shall be chargeable with the taxes, *no matter who is the owner, or in whose name it is assessed and advertised*, and that an *erroneous* assessment does *not* vitiate a sale for taxes. Of course, the property must, under the compact, be *taxable;* but if it is, then the *mode* of enforcing payment of taxes is *wholly* within legislative control."

There is no constitutional provision to the effect that property *shall be assessed* in the name of the *owner.* That is a matter of legislative control. Every revenue law provides for the assessment of property in the name of "unknown owners," and such assessments have always been upheld. This is only one instance to prove that it is *not* an *essential prerequisite* to the making of a legal assessment, that the *name* of the *true owner* must be ascertained as a *condition precedent.*

In the case of O'Grady vs. Barnishel, 23 California, 287, the Court, during the time Justice Field, now of this Court, was Chief Justice, said:

"An assessment of land in the name of 'A. B. and all claimants known and unknown,' is *valid* and effectual, even though 'A. B.' was neither the *owner* of, nor the *possessor* of, the property at the *time* of the *assessment.* A *mistake* in the *name* of the *person* to whom the property *should have been assessed*, does *not* affect the *validity* of the *tax* against the *property.*"

In the case of Thompson vs. Lessee of Carroll, 22 How. U. S. 433, this Court affirmed the principle that property could be legally sold under a subsequent act, though the property was originally assessed defectively, and held "that it is *not* necessary to the validity of an assessment and sale of property taxed, the *name* of the *true owner* be ascertained."

In De Treville vs. Smalls, 98 U. S., 517 to 528, this Court passed upon an Act of Congress in all respects similar to the statute under consideration here, as well as to the statute of Iowa above referred to, and the same ob-

jections as are now raised to the Louisiana statute, and as were raised to the Iowa statute, were there urged against the Act of Congress, and this Court, after a full and thorough consideration of the question, affirmed the validity and the constitutionality of the Act of Congress, and maintained the sale made thereunder. The Act of Congress provided that the commissioner's certificate of sale should be *prima facie* evidence, not merely of regularity of the sale, but also, of its validity and of the title of the purchaser, and it enacted that the deed should only be effected as evidence of the regularity and validity of the sale, by establishing the fact that the property was not subject to taxation, or that the taxes had been paid previous to the sale, or that the property had been redeemed. It will be observed that the provisions of the Act of Congress were, in all respects, as stringent, if not more so than are the provisions of the Louisiana Statute under consideration here. The opinion of the Court in the case cited is so full and the reasoning so conclusive and applicable to the case at bar that we take the liberty of calling the special attention of the Court to it, and of requesting that your Honors give it careful reading, as we feel assured you will. In that case the Court took occasion to refer to a statute of the State of Ohio similar to the Act of Congress and to the Iowa statute hereinabove referred to, and cited with approval and approbation, decisions of the highest Courts of Iowa and Ohio maintaining the validity, and enforcing the provisions, of the statutes of those States.

The opinion and decision in the case of De Treville vs. Smalls, *supra*, were affirmed by this Court in Keeley vs. Sanders, 99 U. S. 441; Sherry vs. McKinley, ibid., 497, and Springer vs. U. S., 102 U. S. 586.

We have quoted copiously from the decisions of this Court, and of the highest Courts of the different States of the Union, and have copied almost the entire opinions of

the Supreme Court of Louisiana in the Lake and Douglas cases, not only to show that the jurisprudence of this Court and of the Courts of the various States are well settled that statutes of the character of the one now under discussion are not unconstitutional, but to show that in maintaining the validity and constitutionality of Act 82 of 1884, the Supreme Court of Louisiana simply and only followed the settled jurisprudence on that point. We have copied the opinions almost bodily, also because the reasoning in those cases is so cogent, clear, concise and succinct, and so unanswerably in favor of the position assumed by the defendants in error, that we deem them much stronger and more conclusive arguments in our favor than we ourselves could make.

As previously stated in this brief, the provisions of Act 82 of 1884, have become settled as a "rule of property" in this State. To such an extent is this the fact that, in its opinion in this case (Tr. 85), the Supreme Court felt called upon to observe:

"The argument now addressed to us against the constitutionality and interpretation of the Act must be viewed as directed against a *series of decisions of this Court.* To those decisions we must adhere and hold the Act precludes the inquiry. In Re Orloff Lake, 40 La. An. 142; In Re Douglas, 41 La. An. 765; Breaux vs. Negrotto, 43 La. An. 430, *et seq.*

* * * * *

"In all aspects of the case we think the defendant's title is protected by a line of decisions that no Court should deem itself at liberty to overthrow, especially as they are based on that provision of our organic law dealing with the subject of taxes left still unpaid after the liberal grace extended to owners by the ordinance."

The counsel for plaintiff in error argue that the statute makes the tax collector's deed conclusive evidence of the title in the grantee, and that it is only necessary, they contend, under the provisions of the statute for one claim-

ing title thereunder to produce the tax collector's deed, and thereby shut out and prevent any inquiry on behalf of the former owner into even the essentials. A mere reading of the statute will show that counsel for plaintiff in error have no foundation for such an assumption, and that the deed fully and amply protects the former owner by guaranteeing to him the right to show the non-existence of any of the essentials necessary for the valid exercise of the taxing power, or for validly selling his property to enforce the payment of his taxes to the State. The various decisions of the State Supreme Court in construing the statute are unanimous on the point that the statute would not preclude or prevent any investigation of, or inquiry into, those points which the settled jurisprudence of the country, and the unanimous opinion of the text writers on the subject, agree are essential in tax sale matters. That the Courts of this State have not considered or construed the tax collector's deed under the statute as conclusive evidence of the title in the grantee, or as precluding any inquiry into the regularity of the essentials, is fully and conclusively shown by the various decisions of the State Supreme Court annulling sales under the statute where the former owner has alleged and shown the absence of any of the essentials. In none of the cases in which sales have been maintained have the Courts of this State held that the statute or the deed thereunder, in any manner, prevented the former owner from showing the non-existence of any of the essentials.

Counsel for plaintiff in error places much reliance in this Court, as they did in the State Court, upon the decision of your Honors in the case of Marx vs. Hanthorn, 148 U. S. 172, but we earnestly and seriously urge that the reading of the opinion in that case will show that it has no bearing on the case at bar. Clearly, the principles recognized in that opinion are not contrary to those con-

tended for by the defendants in error. The Court rested its opinion in that case, it seems to us, on a decision of the State Court, which your Honors followed. Even in the opinion of this Court the principle is recognized that, "It is competent for the Legislature to declare that a tax deed shall be *prima facie* evidence not only of the regularity of the sale, but of all prior proceedings, and of title in the purchaser;" and your Honors also recognized the principle that: "The Legislature might, doubtless, make the deed conclusive of every thing except essentials." We have seen in the preceding pages what the essentials are, and it is unnecessary to repeat them here, but it is proper to remark that there is no attempt or pretence that the provisions of the Louisiana statute make the deed conclusive evidence of the regularity of any of the essentials.

Following the decisions of the Oregon State Court construing the statute under which the sale was made, as is the custom and rule of this Court, your Honors held that the former owner was entitled to notice, either actual or constructive, of the sale, and that the direction of the statute as to the manner of giving the notice must be followed. This Court also found, following the decision of the State Court, "that the name of the owner of the lands to be sold should appear in the notice of the sale." As the name of the owner in that case did *not* appear in the notice, the Court found that the law, as to the notice, had not been complied with and that, therefore, the sale could not be maintained.

The case at bar presents an entirely different state of facts, as well as different provisions of law. As stated before, the special constitutional authority for the statute under consideration was unlimited, the provision being, as before remarked, that the property should be "*sold in the manner to be provided by law.*" We have seen that the manner provided by the statute under consideration, which

was passed pursuant to, and by virtue of this constitutional grant, provided that the notice to the delinquent tax payer should be by publication which, as already shown, is a recognized mode of giving notice in tax proceedings, and that the notice should be "in the name of the party in whose name the property was assessed, or in the name of the present owner of the same." And we have also seen, and the record shows, that the *notice here was to the plaintiff in error by his full and complete name.* (See advertisement, transcript, 39 and 40, and tax collector's deed, transcript, 28 and 29.)

Judge Cooley, in his work on Taxation, p. 266, says briefly and to the point, that:

"*Notice* of proceedings in such cases and an *opportunity* for a *hearing* of some description were matters of constitutional right. It has been customary to provide for them as a part of what is 'due process of law' for these cases." See also, pp. 36, 37, 38; note 1, p. 37; note 1, pp. 38, 39.

There is no doubt but that an act of the Legislature which provides for notice, and by the terms of which the tax payer is given an opportunity to be heard, provides for such a process, in depriving an owner of his property, as comes within the constitutional limit. If, therefore, under Act 82 of 1884, a tax payer is given notice and an opportunity to be heard, such tax payer could require nothing more. Every reasonable protection would then be given him by the law—and that would be DUE PROCESS OF LAW.

From numerous authorities it is clear that any statute on the subject of taxation which accords to the tax payer, before the proceedings which divest him of his property, the protection afforded by a due and proper notice, and an opportunity to be heard, would conform to the principles involved in the constitutional clause ordaining that no man shall be deprived of his property without due process of law.

No matter what may be the *form* of the proceedings adopted by the legislature to enforce the tax, it is only necessary that the statute should conform to the fundamental protective principles alluded to above, and that the officers charged with the duty of executing the statute follow its mandatory provisions.

Act 82, of 1884, provides for the advertisement of property upon which delinquent taxes are due prior to Dec. 31, 1879, and ordains that "such advertisement shall be full, and sufficient notice to all persons interested, and no other notice shall be required." It further provides, "that such advertisement shall contain the name of the party in whose name the property was assessed, or the name of the present owner of the same."

These provisions for notice fulfill one of the constitutional requirements embodied in the phrase "due process of law."

The opportunity for a hearing is given at all times in the courts. Nothing prevents the tax payer or property owner from enjoining the sale of the property advertised by the tax-collector under the authority of Act 82 of 1884. He enjoys that right under other laws. The Supreme Court of the United States decided, in the case of McMillan vs. Anderson, 95 U. S. 41, that such a remedy is authorized under Articles 299 to 309 of our Louisiana Code of Practice. But the right to be heard must be exercised before the proceedings are concluded. The tax payer cannot be permitted to sit idly by and allow his property to be sold without taking advantage of his rights through the courts. A sale under such circumstances would be like a judgment by default, or *pro confesso*. The constitutional requirement of a "hearing" is fulfilled if granted at any time before the sale. The Legislature certainly has the power to make tax proceedings final as to property, by granting no further "hear-

ing" after the sale, when ample "hearing" is granted *before* the sale.

To make the deed of sale conclusive as to the validity of all prior proçeedings, does not exclude all hearing. Its effect is to prevent any further hearing upon a subject of which the tax payer had PREVIOUSLY *every right to be heard.* It is his own negligence if he fails to exercise that right within the prescribed time.

Under Act 82 of 1884, the owner of property has notice and an opportunity to be heard at any time *before the sale*, before his rights or interest are affected; he even has the right, under the terms of the statute, to enjoin the execution of the writ of possession to be obtained by presenting a copy of the tax collector's deed to a Court of competent jurisdiction, and the record (pp. 16 and 17, and pp. 43 and 44,) shows that the defendants in error *have been in possession* of the property in controversy since 1885, hence the act is constitutional. There are no restrictions or limitations placed upon the power of the Legislature to make tax proceedings, as well as judicial proceedings, final and conclusive in certain instances. A tax sale may be made in its nature *res adjudicata* as well as a judgment. Just as a judgment rendered by default, or *pro confesso* on a domiciliary service of citation which may never, in fact, have reached the defendant, may become final and conclusive against him, so, likewise, may tax proceedings after notice by advertisement as in the case at bar.

In the case of Henderson vs. Ellerman, 47 La. An. 307, the contention was made, as it is in the case at bar, that the decision in Marx vs. Hanthorn, *supra*, was in conflict with and contrary to the former decisions of the Louisiana Courts. The Court there went into a long and thorough discussion of the provisions of Act 82 of 1884, and of the various decisions interpreting and maintaining

the same and, in closing its opinion the Court shows the fallacy of the contention, using the following language, to-wit:

"We have been thus careful because of the fact that a somewhat similar question was raised and decided recently by the Supreme Court in Marx vs. Hanthorn, 148 U. S. 172. But a simple inspection of the opinion in that case shows that it is wholly different from the Lake and Douglas cases, in that it treats of an *ordinary* tax statute, enacted by the Legislature of the State of Oregon—one not grounded upon a constitutional provision, as Act 82 of 1884, is. That opinion says: 'It is competent for the Legislature to declare that a tax deed shall be *prima facie* evidence not only of the *regularity of the sale* and of all prior proceedings, and of the title of the purchaser, but that the Legislature cannot deprive one of his property by making his *adversary's claim to it*, whatever that claim may be, *conclusive* of its own validity, and it can not therefore make the tax deed *conclusive evidence of the holders title to the land.*'

"But no such power as that was ever by this Court affirmed to exist in the Legislature, even under the unlimited grant of authority that is contained in the constitutional ordinance.

"On the contrary it was distinctly affirmed 'that precedents are not wanting to show that in several sister States their Legislatures have been recognized as having the power of making such deeds *conclusive* as to *non-essential* prerequisites, but the exercise of legislative power has never been sanctioned so as to make such deeds *conclusive* as to essential prerequisites.' (Italics by the Court.)

"The two decisions are not at all in conflict, and they may stand together. This more fully appears by other decisions of that Court."

The Court then proceeds with a discussion of the opinions of this Court in the cases of Callahan vs. Hurley, De Treville vs. Smalls, Keeley vs. Sanders, and Sherry vs. McKinley, all herein above referred to, and quotes quite freely from them to show that the decision in Marx vs. Hanthorn is not only not in conflict with the decision of the State Supreme Court, but is in harmony with the former decisions of this Court.

Even if your Honors should not agree with the Louisiana Supreme Court and with us, that the opinion in Marx vs. Hanthorn is not contrary to the former decisions of this Court, then, it seems to us, and we earnestly urge, that that decision must fall by the weight of the vast authorities against it as contained in the very numerous decisions of this Court hereinabove referred to, many of which are quoted from by the State Supreme Court in its opinion in Henderson vs. Ellerman case. Especially should this be the case as this Court found that the decision of the Supreme Court of Oregon, interpreting the statute, was a "conclusive construction of the meaning and effect of the State statute in question," whereas the Louisiana Supreme Court has reached a different conclusion as to the statute under consideration in the instant case, and as this Court did not, in its opinion, even refer to any of its former opinions on the same subject matter.

The suggestion in the specification of errors, and the argument in the brief of plaintiff in error that the statute provides for the taking of private property for public use without just compensation are, it appears to us, without merit. A mere reading of the statute demonstrates, and the various decisions of the Supreme Court maintain, that the sole and only purpose and object of the statute is to enforce the payment of delinquent taxes under the provisions and authority of the constitutional grant referred to in this brief. The fallacy of plaintiff's argument is further shown by the fact that the principal only of the taxes for which the property in controversy was sold, to say nothing of the interest, costs and charges, which were very great, exceeded the price paid at the tax sale.

It does not seem to us that the alleged conflict of the statute with the State Constitution is a proper matter for determination by this Court, though counsel for plaintiff

have embodied that question in their specifications of error, and they have quoted extensively from Saunders on Taxation, to sustain their position. While Mr. Saunders is an eminent member of the Louisiana bar, whose ability is well known and fully recognized, we deem it only necessary to call the attention of your Honors, if you take up this question at all, to the many cases in the State Supreme Court where the same question has been repeatedly decided adversely to the contention made by the plaintiff in error, and apparently sustained of the opinion of Mr. Saunders. See, In Re Lake, 40 La. An. 147; In Re Douglas, 41 An. 765; Henderson vs. Ellerman, 47 An. 309; Dibble vs. Leppert, 47 La. An. 796, and the opinion in the instant case. It is proper to remark that Mr. Saunders' book appeared and was published before any of the above decisions, and that our State Supreme Court, notwithstanding that it had the benefit of this publication and of the opinions of Mr. Saunders, decided contrary to his views.

We deem it proper to call the attention of the Court to the fact that even if your Honors conclude that the statute under consideration is unconstitutional, which we do not think you will do, this case can well be decided in favor of the defendants in error upon other points raised in the pleadings, upon which a large amount of testimony has been submitted, but which does not properly come before this Court on the Writ of Error, and that therefore, should your Honors reach a conclusion adverse to the defendants in error on the propositions which are properly before you, it will be necessary to remand the case to the State Court for trial on the other issues. However, we feel confident that your Honors will follow not only the decisions of the Courts of this State on the constitutionality of the statute, but also the decisions of the Courts of every State which have been called upon to construe and pass upon the constitutionality of like statutes,

and the decisions of this Court on the same subject matter, and that, therefore, your Honors will affirm the judgment of the State Court.

Respectfully submitted,

J. ZACH. SPEARING,
Att'y for J. H. Lang, one of the Defendants in Error.

New Orleans, April, 1897.

SYLLABUS.

A statute which provides that a tax collector's deed shall be only *prima facie* evidence of the regularity of *essential prerequisites*, and conclusive evidence of the regularity of *non*-essential prerequisites to the valid exercise of the taxing power is not in conflict with the Constitution, either State or Federal. In Re Orloff Lake, praying, &c., 40 La. An., 142; In Re Douglas, 41 La. An., 765; Surget vs. Newman, 43 La. An., 873; Henderson vs. Ellerman, 47 La. An., 306; Dibble vs. Leppert, ibid., 792; Michel vs. Stream, 48 La. An., 241; Poland vs. Dreyfous, ibid., 83; Castillo vs. McConnico, 47 La. An., 1473; Callahan vs. Hurley, 93 U. S., 387; Witherspoon vs. Duncan, 4 Wall., 217; DeTreville vs. Smalls, 98 U. S., 517; Keely vs. Sanders, 99 U. S., 441; Sherry vs. McKinley, ibid., 497; Springer vs. U. S., 102 U. S., 586.